REPORT RESUMES

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INSTITUTIONALIZATION OF THE MENTALLY RETARDED, A SUMMARY AND ANALYSIS OF STATE LAWS GOVERNING ADMISSION TO RESIDENTIAL FACILITIES, AND LEGAL RIGHTS AND PROTECTIONS OF INSTITUTIONALIZED PATIENTS.

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SUMMARIZING AND ANALYZING LAWS GOVERNING THE ADMISSION OF THE MENTALLY RETARDED TO RESIDENTIAL FACILITIES AND THE LEGAL RIGHTS AND PROTECTIONS OF INSTITUTIONALIZED PATIENTS, THIS REPORT COVERS THE 50 STATES AND THE DISTRICT OF COLUMBIA AT THE END OF 1966. AFTER A CONSIDERATION OF THE METHOD OF REPORTING, TERMINOLOGY, AND DEFINITIONS, 13 TABLES AND CHARTS ARE PROVIDED WITH DISCUSSIONS. STATUTORY PROVISIONS TREATED INCLUDE VOLUNTARY ADMISSION (APPLICANTS AND PATIENTS' PROCEDURES AND CRITERIA, RELEASE, AND DISCHARGE), INSTITUTIONALIZATION BY CERTIFICATION (APPLICANTS AND PATIENTS' CONSENT, PROCEDURES AND CRITERIA, REVIEW, RELEASE, AND DISCHARGE), AND JUDICIAL COMMITMENT (PRE-HEARING, HEARING, POST-HEARING, AND DISCHARGE PROCEDURES). ALSO PRESENTED ARE THE PROTECTIONS PROVIDED AND RIGHTS ASSURED INSTITUTIONALIZED PERSONS, INCLUDING CONFIDENTIALITY, COMMUNICATION, TRAINING, TREATMENT, PERIODIC REVIEW, AND CONDITIONAL RELEASE. FOOTNOTES THROUGHOUT PROVIDE REFERENCES OR SUGGEST FURTHER STUDIES AND RESEARCH. APPENDIXES COMPARE INSTITUTIONALIZATION PROCEDURES FOR THE MENTALLY RETARDED AND THE MENTALLY ILL AND ARRANGE DATA ON FIRST ADMISSIONS TO INSTITUTIONS FOR THE MENTALLY RETARDED BY AGE GROUPS. (JD)

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INSTITUTIONALIZATION OF THE MENTALLY RETARDED

A Summary and Analysis of State Laws
Governing Admission to Residential Facilities,
and Legal Rights and
Protections of Institutionalized Patients

The George Washington University
Institute of Law, Psychiatry and Criminology

Published by
NATIONAL ASSOCIATION FOR RETARDED CHILDREN
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INSTITUTIONALIZATION OF THE MENTALLY RETARDED

A Summary and Analysis of State Laws Governing Admission to Residential Facilities, and Legal Rights and Protections of Institutionalized Patients

Edited
by

Roger W. Newman, LL.M.

The George Washington University

INSTITUTE OF LAW, PSYCHIATRY
AND CRIMINOLOGY

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NATIONAL ASSOCIATION FOR RETARDED CHILDREN
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The National Association for Retarded Children is pleased to cooperate with the George Washington University Institute of Law, Psychiatry, & Criminology, in making available this important compendium of laws pertaining to the field of mental retardation.

This publication is believed to be the first to present the statutory enactments of every state involving the subject of public institutions, their establishment and operation for the care, training, and treatment of the mentally retarded.

It is of vital importance to have modern legal language, procedures, and concepts adopted in order to better serve retarded persons for whom institutional care is indicated.

The information herein assembled should prove valuable to public officials concerned with administering programs under guidelines established by law, legislators seeking improved statutory concepts, and citizens concerned with updating a field that has had many years of legislative neglect.

Luther W. Stringham
Executive Director

Eighteenth Annual Convention
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PREFACE

In his message of October 11, 1961, the late President Kennedy noted that: "We as a nation have for too long postponed an intensive search for solutions to the problems of the mentally retarded." The Institute of Law, Psychiatry and Criminology of The George Washington University is currently conducting an [redacted] empirical study of the operation of laws and administrative practices affecting the mentally retarded and their families. Since society's responses to the special needs, limitations and potential of the mentally regarded are to a large extent expressed in, and limited by, the law and its administration, we believe that such a study, and the guidelines for improvement, both legislative and operational, which we hope to derive from it, is an essential part of that quest to which the President, and the nation, were thus committed.

The project, made possible by a planning grant from the National Association for Retarded Children and a project grant from the National Institute of Mental Health (MH-01947), had its origins in the recommendations of the Task Force on Law of the President's Panel on Mental Retardation, and in the findings and recommendations of a similar empirical study completed by the Institute about a year ago. This study, of determinations of civil incompetency (proceedings that may lead to the appointment of a guardian or conservator; ad hoc determinations of competency in cases involving the validity of a contract or a marriage, eligibility for drivers licensure, capacity to vote, to sue and be sued, to testify in court, etc.; the effect of disability determinations by the VA and Social Security Administrations; and personal and estate planning for the incompetent), was concerned not alone with the mentally retarded, but with impairments associated with physical and mental illness and with the aging process as well.[1] The current study - The Mentally Retarded and the Law - was designed to apply the empirical research techniques developed in the Mental Competency Study to the full spectrum of the law's engagement with the mentally retarded, and to collect the data - both normative and empirical - required to test and implement the recommendations of the President's Panel on Mental Retardation. Its objectives are to:

1. bring together and analyze the existing laws in every jurisdiction throughout the country - both statutes and court decisions - affecting the mentally retarded;

2. study the operation of these laws in actual practice in selected jurisdictions;

3. bring to bear upon the analysis of the data thus obtained, the insights and perspectives of a variety of disciplines, including law, medicine, psychology, sociology, criminology and social work;

4. establish and maintain liaison with professional and lay groups working with the retarded, and with persons and agencies responsible for the administration and enforcement of laws affecting the retarded, in order to identify more accurately the problems and advantages inherent in various alternative programs and practices;

5. derive from such study and analysis, guidelines for new legislation; and

6. publish the findings and recommendations of the project in a form appropriate for use by individuals and groups interested in the improvement of laws and practices affecting the mentally retarded.

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[1] The findings and recommendations of the study will be published in early 1968 by Prentice-Hall, Inc. as Allen, Ferster and Weihofen, MENTAL IMPAIRMENT AND LEGAL INCOMPETENCY.

In this task, the Institute has been very greatly assisted by the dedicated and knowledgeable members of its Advisory Board,[2] and by the professional and administrative staff of the National Association for Retarded Children.

The initial phase of the project was the collection in full text of all of the statutes, and as many of the administrative regulations as could be discovered, of all 51 jurisdictions of the country, affecting the mentally retarded. Because of the wide variety of legislative enactments, non-uniform indexing systems, and difficulty of access to implementing regulations, this was no small undertaking. It was, however, a necessary one in order to make possible an appropriate selection of jurisdictions for empirical study, adequately taking into account geographic distribution, the typicality and atypicality of state laws, length of operation under existing laws, and the nature of services available for the mentally retarded.

Today there are more than 200,000 persons in residential care institutions for the mentally retarded, with many others on "waiting lists," and still others in temporary (which often becomes permanent) placement in state mental hospitals and other facilities. The Task Force on Law expressed concern about the inadequacies of the present laws governing admission to such institutions, protection of the civil and human rights of patients, provision of education and training focused on the goal of ultimate release to the community, protection of both personal and property interests, and mandatory periodic review of the need for total institutional care. Although these inadequacies have long been known to exist, and although the attitudes of professional persons about the appropriate role of the total care institution vis-a-vis community alternatives has changed markedly, little has been done to develop institutionalization laws that will permit effective programs to meet the problems of mental retardation, and at the same time preserve the civil rights, protect the property and safeguard the human dignity of the mentally retarded.

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[2] The Advisory Board consists of:

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In the pages that follow will be found a charting and analysis of the statutes and administrative regulations governing institutional care of the mentally retarded. It provides an essential point of departure for state planning groups and others interested in the improvement of our present laws. It is by no means, however, a full "picture" of the law - only empirical study can reveal how the law operates in actual practice (the report of our empirical researches over a three-year period in a dozen or so selected states, will be completed in about 8 months).[3]

For example, in one of the states included in our empirical studies, there is statutory provision for periodic evaluation of patients in residential care institutions; but the institutions have no resident psychologists, and hence inmates are never retested. In another, the statute provides that commitment to a state training school shall not of itself deprive persons so committed of their civil rights; yet in practice, none of the inmates (even those "voluntarily" admitted) are allowed to handle their own property, apply for driver's or marriage licensure, enter into a contract (even one as simple as a subscription to a magazine), or communicate with the outside world without institutional censorship.

---

[3] Other publications of the Mentally Retarded and the Law project to date include:

(footnote continued on page 5)

And in still another, which has explicit statutory instructions on the use of restraint and "seclusion," one of the state institutions employs means of control that would not be permitted in the most repressive penal institution. Again, in many of the states studied, the legal procedures leading to institutionalization, although couched in terms which would seem to provide the safeguards of independent judicial review, are in fact administered so perfunctorily that there is in fact no independent review at all.

Yet, with all its limitations, the written law is an essential starting point. It is our earnest hope that the material to follow will be a valuable reference source to agencies and organizations concerned with the problems of mental retardation, to researchers seeking to identify problems and possible solutions, to officials who must administer the laws as best they can with their often severely limited resources, and to state planners and legislative committees seeking ways to improve the normative prescriptions under which protective services must be rendered.

On June 15, 1964, President Johnson affirmed in the strongest possible terms the determination of his administration to continue to seek solutions to the problems of mental retardation:

> We have made progress. But our efforts have only begun. We will continue until we find all the answers we have been seeking, until we find a place for all those who suffer with the problem.

No worthier or more demanding goal could have been stated; and no goal less worthy or less demanding could possibly suffice in addressing needs so long neglected.

Richard C. Allen
Washington, D.C.

(footnote 3 continued from previous page)

Allen, "Toward an Exceptional Offenders Court," M.R., Vol. 4, No. 1, Feb. 1966.

Ferster, "Eliminating the Unfit - Is Sterilization the Answer?" 27 Ohio State L. J. 591, 1966.

Brown and Courtless, "The Mentally Retarded Offender," soon to be published by the President's Commission on Law Enforcement and the Administration of Justice.

INSTITUTIONALIZATION OF THE MENTALLY RETARDED

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I. INTRODUCTION

A. Scope

This publication summarizes legal provisions governing residential care for the mentally retarded at the end of 1966. It was prepared in the course of a study of "The Mentally Retarded and the Law," which is being conducted by the Institute of Law, Psychiatry and Criminology of the George Washington University.[1] This interdisciplinary research project originated in the recommendations of the Task Force on Law of the President's Panel on Mental Retardation,[2] and in the findings of the National Law Center's recently completed "Mental Competency Study."[3] Its objectives include not only the collection and analysis of all existing laws affecting the mentally retarded throughout the United States, but also empirical study of the actual operation of these laws in selected jurisdictions, and the preparation of guidelines and recommendations for improvement of both laws and practices.

The present report is limited to a compilation of normative data -- statutes and administrative regulations -- affecting legal procedures by which mentally retarded persons may be institutionalized, and legal rights and protections of mentally retarded patients. The report is organized

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1. The three-year study is supported by a grant from the National Institute of Mental Health (U.S. Public Health Service Grant MH 01947), and is under the direction of Professor Richard C. Allen, The George Washington University National Law Center, with Associate Professor Elyce Z. Ferster as Co-Director. The author is Principal Attorney for the project.

2. See Report of the Task Force on Law, The President's Panel on Mental Retardation (Washington, 1963), and Section VII of A Proposed Program for National Action to Combat Mental Retardation: Report of the President's Panel on Mental Retardation (Washington, U.S. Gov't Printing Office, 1962).

3. This project conducted an empirical study of the operation of guardianship and civil incompetency laws, and of governmental and private planning for incompetent persons. Findings of the study are soon to be published by Prentice-Hall, Inc., as Allen, Ferster & Weihofen: Mental Impairment and Legal Incompetency.

and presented as a foundation for further action. It is primarily intended to aid planning groups and others interested in legislative, judicial, and administrative reform, in appraising the laws of their states in comparison with similar data from other jurisdictions in the country. In addition, this material may be used by researchers, as it has been used by the staff of "The Mentally Retarded and the Law," to identify specific subjects and appropriate jurisdictions for empirical study.

Only civil procedures for institutionalization are considered here, although later publications of the study will discuss commitments of the retarded which may result from criminal proceedings. Similarly excluded are commitments ordered by juvenile courts, unless the court has independent jurisdiction over mentally retarded children, rather than commitment power ancillary to its jurisdiction over children who are delinquent, dependent, or neglected. Laws concerning the establishment, administration, and licensure of public or private agencies and institutions for the retarded are treated only incidentally, insofar as they may affect the applicability of various procedures and rights under consideration. Likewise, except for noting instances in which guardianship or incompetency may be a concomitant of institutionalization, this report does not deal comprehensively with the area of legal competency.[4] And finally, the scope of the present undertaking does not encompass laws providing for particular services such as day care, special education, and vocational rehabilitation, which do not involve institutional residence.[5]

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[4] See note 3 supra.

[5] Many of the excluded topics have been explored in the reports of the other Task Forces which, together with the Task Force on Law, comprised the President's Panel on Mental Retardation. These Task Forces were assigned the following subjects: Behavioral and Social Research; Coordination; Education and Rehabilitation; Prevention, Clinical Services and Residential Care.

In addition, several current studies in related areas are concerned with topics which affect the mentally retarded. For example, the Council for Exceptional Children, a department of the National Education Association, is presently engaged in a study of all state laws pertaining to the education of handicapped and gifted children.

The subject matter of this report covers three main areas -- terminology and definitions used for purposes of institutionalization, voluntary and involuntary procedures available to accomplish institutionalization, and protections and rights guaranteed to institutionalized patients. With the exceptions noted above, substantially all statutes affecting institutionalization of the mentally retarded are subsumed under these categories. However, statutory requirements of state residence for institutional eligibility and of financial responsibility for institutional services are not covered. Included material is presented through a series of schematic charts, which further divide the main areas according to significant components found in the statutes. Commentary accompanying the charts indicates the incidence and significance of the various statutes and regulations, but this narrative does not undertake to recommend superior or model provisions.

B. Charts

The thirteen charts contained in this report possess both the virtues and the limitations of any attempt at simple description of material as diverse and complex as state legislation. The tabular form of presentation affords not only concise summary, but also ready comparison of statutory provisions dealing with selected topics in the various jurisdictions. It should be recognized, however, that none but the simplest statute can be fully represented in such form. Recourse to complete statutory texts may be necessary for many purposes which require more comprehensive evaluation.

In these instances, the charts provide convenient entry to the relevant statutes. This in itself constitutes a valuable service, in light of the lack of uniformity and specificity of most statutory indices.

It should also be pointed out that the statutes do not necessarily provide a complete or accurate description of the "law" operative in a given jurisdiction. Statutory provisions or the absence of statutory regulation, as indicated by the charts, may be amplified, modified, vitiated, or obviated in several possible ways -- by executive rulings such as the opinions of attorneys general, by case law accumulated from judicial decisions, by administrative regulations promulgated by agencies and institutions, or by unwritten practices established "extra-legally" by those who work with the mentally retarded.[6] As noted below, administrative regulations, where extant and available, have been used to supplement the charted statutes; for the most part, however, the statutes, of necessity, have been interpreted solely by the internal evidence of their language. Case material and more complete information on administrative practices will be included in the project's field study of sample jurisdictions.

The statutes of fifty-one jurisdictions (50 states and the District of Columbia) are covered by the charts. Included statutes are those in effect and generally available as of December 1, 1966. Also tabulated, for comparative purposes, are the provisions of the Draft Act prepared by the American Association on Mental Deficiency.[7]

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[6] The extent to which actual practices may differ from statutory norms is an important aspect of the empirical studies conducted and to be published by "The Mentally Retarded and the Law." See note 1 *supra* and accompanying text.

[7] The Draft Act is contained in Section II, "Standards on Admission and Release," of the *Standards for State Residential Institutions for the Mentally Retarded* prepared by the A.A.M.D. Project on Technical Planning in Mental Retardation, and published as a monograph supplement to the *American Journal of Mental Deficiency*, vol. 68, no. 4 (Jan. 1964).

Except for an initial table (Chart I-A) which is a textual presentation of statutory definitions, the charts are organized by vertical columns labeled to indicate significant elements of the tabulated statutes. The first vertical column at the left margin identifies horizontal units of each chart. This column lists alphabetically the jurisdictions under consideration; designates the basic statutory code used for each jurisdiction, along with as much of the statutory citation as is common to the provisions charted horizontally; and indicates footnotes which apply to the entire tabulation for the particular jurisdiction. Subsequent vertical columns are headed by key words or phrases to denote topical statutory components. Entries in these columns may consist of specific citation of applicable statutory provisions, brief notation of the import of these provisions, and/or indication of relevant footnotes.

A list of footnotes follows each chart. These notes are primarily utilized to explain the tabulation of statutes which do not precisely conform to the charts' columnar organization, to cite additional statutory provisions which bear upon the charted topics, and to correlate comparable statutory provisions from different jurisdictions.

Administrative regulations, along with some significant opinions of attorneys general and interpretive court decisions, are also footnoted. Since the material is not otherwise available, regulatory data were obtained in response to requests sent to attorneys general, to directors of state department of health, welfare, and institutions, and to institutional superintendents in all states. As might be expected, completeness of this data varies widely from state to state, and elicited materials have therefore been treated as occasional addenda to the charted statutes. However, this subordinate position should not obscure the fact that, where they exist, these regulations are equal in legal force and effect to legislative enactments. Regulations which merely repeat statutory provisions are not indicated, and rules applicable to a single institution are seldom noted unless the institution is the primary residential facility for the mentally retarded within the jurisdiction involved. Because of their limited availability, administrative rules and regulations are quoted at length when cited in the footnotes.

C. Appendices

The two tables appended to this report are included to provide perspective for the interpretation of preceding data. Appendix A shows the prevalence of various types of statutory institutionalization procedures for the mentally retarded among United States jurisdictions, and the extent to which these procedures are either independently drafted or merged with procedures applicable to the mentally ill. Appendix B provides statistical information regarding chronological age levels at which mentally retarded persons have been initially institutionalized in recent years.

II. TERMINOLOGY AND DEFINITIONS

A. Terminology

The terminology of mental health codes is not generally noted for its clarity and precision, and semantic confusion particularly characterizes statutory provisions which govern institutionalization of the mentally retarded. In the first place, there is no agreement among the jurisdictions upon a basic term to denote this class of persons. Although many terms have been adopted for this purpose, and even more have been proposed, five have been most favored by various legislatures -- "mentally retarded," "mentally deficient," "feeble-minded,""mental defective," and "idiotic." Significantly, the order of this series reflects both the current prevalence of the terms,[1] beginning with the most popular, and the historical trend in their use, beginning with the most recent.

Statutory terms differ from state to state, and in many states they are periodically "modernized." Especially in recent years, amendments which merely substitute one term for another have frequently been made in mental retardation statutes. Much of the impetus for such change results from attempts to incorporate in the law the nosologic advances of the scientific community. Another factor may be a process of "stigma avoidance" whereby the legislatures replace older terms which have acquired epithetical connotations. It is also apparent that mental retardation statutes, like those in many other areas, are subject to vogues of terminology which result in imitative adoption of terms employed by sister states, especially if the terms are "new" and the originating states "influential."

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[1] See "Primary Statutory Terms" column, Chart I-B.

In approximately a third of the jurisdictions, the statutes use terms to designate the mentally retarded without ever defining them.[2] In this respect, however, differences amoung the states may be more apparent than real. Many of the existing statutory definitions are only perfunctory; others are more confusing than definitive. For beyond the variety of basic statutory designations is an even more bewildering array of secondary terms used to define or describe the class of persons so designated. By way of illustration, the following adjectives, qualified by "mentally," occur in various statutes dealing with the institutionalization of retardates:

afflicted
backward
defective
deficient
deranged
disabled
diseased
disordered
faulty
handicapped
ill
impaired
imperfect
inadequate
incapable
incompetent
inferior
infirm
irresponsible
noneducable
retarded
slow
subaverage
subnormal
underdeveloped
undeveloped
unsound
weak

Since most of these secondary terms are not themselves defined, they seldom impart precision to primary statutory terms. Semantic difficulties are further confounded by the fact that the same terms, both primary and secondary, may be differently defined or used in various jurisdictions.[3] And even within the statutes of a single state, terms which have accepted meanings in other legal areas are often employed in mental retardation provisions without indication as to whether similar or special meanings are intended.

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[2] Statutes with undefined terms are indicated in Chart I-A.

[3] See, e.g., the special meanings assigned to "mental deficiency" and "mental retardation" by N.J. STAT. tit. 30, Ch. 4, § 23 (1965 Supp.), cited in Chart I-A.

B. Definitions

At least in theory, legal terms are specially defined according to the contexts in which they occur. They are terms of art employed by persons who create, interpret, and execute the laws, and their assigned meanings are integrated with the policies and purposes which those laws are designed to accomplish. Hence, the legal definition of a term such as "mental retardation" may be quite different from popular or scientific concepts associated with the same phrase, and medical or psychological diagnoses of a condition with the same name do not necessarily fulfill legal criteria. Since statutory definitions may also vary among several legal areas in which different policies are applied to different classes of persons, the same individuals may not be "mentally retarded" for purposes of voluntary or involuntary institutionalization, special education, civil incompetencies, or criminal responsibility. And to the extent that these definitions embody legislative policy decisions, they are not always readily transferable from one state to another.

In practice, however, these theoretical distinctions are not always observed in the statutes, and, as might be expected, several theoretical problems are thus created. Consider, for example, some of the difficulties raised by the inclusion of competency criteria in the statutory definitions. Among the jurisdictions which attempt to define a class of retarded persons for purposes of institutionalization, the most prevalent method is specification of certain qualifying disabilities associated with retardation.[4]

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[4] See columns under "Further Definition of Statutory Term by Disability," Chart I-B.

The disability most frequently required is that a retardate be "unable to manage himself or his affairs."[5] The latter phrase is taken from guardianship laws in which it has recognized usage as the standard of civil incompetency. Does it have the same meaning in the context of retardation provisions? Even if some special meaning is intended, does the phrase preclude or limit voluntary admission of the mentally retarded? If a retardate, thus defined, is judicially committed, has he thereby been adjudicated incompetent? Where the statutes, or the courts, specify that incompetency does not automatically result from institutionalization, are different criteria required or merely separate procedures? Can a patient be discharged from an institution even though he is still considered to be mentally retarded?

These and other such questions have, of course, been answered in many states by statutory revisions, official interpretations, administrative regulations, and judicial decisions. This is not the place to attempt resolution of remaining problems; the point is rather that such problems are often unnecessary results of confused statutory language. They may be relieved when legislators actually decide fundamental policy questions, such as the relationship between incompetency and institutionalization, and implement these decisions in precise terms.

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[5] See the first column under "Further Definition of Statutory Term by Disability," Chart I-B.

There is considerable variation in both the phraseology and the force of this criterion in the definitions. This is perhaps as good a place as any to note that the tabulations of Chart I-B may be misleading because of the elimination of connectives which join the charted statutory elements. Statutes indicated as having a common element may use that element with different effects, according to its disjunctive or conjunctive linkage with other elements. Of the 25 jurisdictions tabulated as including incompetency criteria in their statutory definitions, only two use the criterion as the sole standard of severity, seven employ it alternatively, and 16 cite it in addition to other requisite consequences of retardation.

Legislation must also be based on a full understanding of the factual situation which is being regulated. To continue with the same example, it seems somewhat pointless to define institutionalizable retardates in terms of civil incompetency when minor children constitute the great majority of institutional admissions.[6] The criterion "unable to manage himself or his affairs" can hardly identify the "retarded" six-year-old, when the phrase is equally applicable to normal children of that age. This does not mean that the retarded, and particularly the retarded in need of institutionalization, should not be described in terms of their handicaps and disabilities; indeed, this approach seems essential. But the handicaps and disabilities must be relevant to the determination which must be made. Several legislatures have recently made initial efforts toward designating the social, educational, and vocational handicaps which have particular relevance to the institutionalization of retarded persons:[7]

> ...mentally incapable of [fully] assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.[8]
>
> ...significantly impaired in [his] ability to learn or [and] to adapt to the demands of society.[9]

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[6] See Appendix B.

[7] In addition to the examples cited below, see the statutes indicated in the last three columns under "Further Definition of Statutory Term by Disability," Chart I-B.

[8] The quoted excerpt is from WASH. REV. CODE tit. 72, ch. 33, § 020(1) (1962), and, with the variation indicated by brackets, from S.D. CODE tit. 30, § 0402 (1960 Supp.). Both provisions are more fully cited in Chart I-A.

[9] The quoted excerpt is from IOWA CODE ch. 222, § 2(5) (1965 Supp.), and, with the variations indicated by brackets, from S.C. CODE tit. 32, §§911(2), 1095 (1965 Supp.), and W. VA. CODE § 2647a (1965 Supp.). The provisions are more fully cited in Chart I-A.

Formulations such as these are admittedly quite broad, but this generality may be necessary in order to subsume a wide variety of individual cases. On the other hand, by replacing uncertain references to civil incompetency with a more appropriate focus upon social capabilities, these standards facilitate the development and use of more specific criteria for institutionalization.

Other criteria used for definitional purposes are somewhat less troublesome, perhaps because they are concerned, not with the consequences of retardation, but with the characteristics which distinguish this condition from other disorders of human behavior, such as mental illness. Most of the jurisdictions with statutory definitions use different terms to express the traditional division between "mental illness" or "mental disease," and "mental defect" or mental deficiency"; about half as many states make a similar distinction by specifying that retardation involves intellectual functioning.[10] Slightly more than a third of the jurisdictions require that mental retardation must originate early in the life of affected individuals.[11] However, only the Draft Act and New Jersey's new statute include a similarly distinctive aspect of retardation -- its relative permanence.[12] This situation may be the result of the many statutory definitions which equate retardation with incompetency, since the functional handicaps imposed by retardation, as opposed to the underlying mental condition, are often subject to change.

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[10] See "Basic Definition of Primary Statutory Term" column, Chart I-B.

[11] See "Further Definition of Statutory Term by Origin" column, Chart I-B. Three of the five statutes which explicitly include retardation due to disease or injury also require that it occur early in life. See "Further Definition of Statutory Term by Cause" column, Chart I-B.

[12] See "Further Definition of Statutory Term by Duration" column, Chart I-B.

The same variability characterizes retarded persons'need for care, which, like disability criteria, is a factor used in the definitions to recognize certain results of retardation. In over half of the jurisdictions reference is made to a retardate's requirement of such services as care, supervision, control and guidance.[13] The necessary services are not usually specified as institutional, however, so these definitions generally fail to distinguish between the retarded who should be institutionalized and those for whom some other protective accommodations would suffice. Sometimes, though, an intent to differentiate institutionalizable retardates may be inferred from context. Such an intention is quite clear, for example, in the few statutes which predicate a person's need for care upon his potential danger to himself or others;[14] it is less clear in the more numerous statutes which phrase the need in terms of the welfare of others or of the community.[15] But most of these statutes also include, as an alternate basis for needed care, the retardate's own welfare or happiness[16] -- neither of which considerations invariably dictates institutionalization. Definitions of this type are thus very broadly drawn to encompass practically all degrees of retardation, with the further selection of institutionalizable retardates left to administrative practices or regulations, judicial decisions, or additional statutory provisions limiting eligibility for institutional admission or the applicability of institutionalization procedures.

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[13] See columns under "Further Definition of Statutory Term by Need for Care -- Requires --," Chart I-B.

[14] See columns under "Further Definition of Statutory Term by Need for Care -- For Safety or Protection of --", Chart I-B.

[15] See the last two columns under "Further Definition of Statutory Term by Need for Care -- For Welfare or Happiness of --", Chart I-B.

[16] See "Further Definition of Statutory Term by Need for Care -- For Welfare or Happiness of Self" column, Chart I-B.

Although the latter procedures are discussed in succeeding sections of this report, it may be appropriate to note here some important relationships between definitional and procedural statutes. First, as may be apparent from previous comments, statutory definitions of the retarded usually do not vary according to different types of procedures by which these persons may be institutionalized. Definitions in terms of a retardate's civil incompetency, his danger to himself or others, or even the welfare of himself, others, or the community, may seem to contemplate involuntary commitment; but such definitions are frequently applicable to other methods of institutionalization as well.[17] Thus, the statutes not only provide little guidance in the appropriate use of individual procedures, but may also blur distinctions among the different purposes served by these procedures.

A closely related point is that definitional variants may modify or negate apparent interjurisdictional differences in institutionalization procedures. As an example, consider two hypothetical states, A and B: state A has followed modern trends in eliminating civil incompetency criteria from its definition of retardation, and in restricting the institutionalization of retardates to voluntary admissions; state B still defines a retarded person as "incapable of managing himself and his affairs," and retains both voluntary and commitment procedures for institutionalization. Despite these seemingly dissimilar statutes, it is entirely possible that procedures actually used in the two states would not be significantly different. In both, voluntary parental applications on behalf of minor children would probably account for most institutional admissions. For cases in which this method could not be followed, institutionalization could be accomplished through court action. In state A it would be necessary to have a guardian appointed in a competency proceeding for the prospective patient, and the guardian could then apply for his ward's "voluntary" admission. Although the same process might be used in state B, commitment proceedings would provide a more direct approach. But under either procedure, in state A or state B, the primary issue for judicial decision would concern the retarded person's competency. It is therefore necessary, in comparing procedures for institutionalization offered by various jurisdictions, to consider not only the kinds of procedures available in each state, but also the effect thereon of the states' statutory definitions of the mentally retarded.

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[17] Compare the criteria tabulated in Chart I-B with the procedures listed in Appendix B.
Of course, there are several statutes which use these criteria of incompetency, danger, and welfare in a more restricted and traditional sense as specially applicable to involuntary commitment. See "Special Criteria for Commitment" column, Chart IV-B, and Section III.D.2.c. infra.

Chart I-A. TERMINOLOGY AND DEFINITIONS FOR INSTITUTIONALIZATION OF THE MENTALLY RETARDED

STATE AND STATUTE	STATUTORY PROVISION
A.A.M.D. DRAFT ACT Art. 2, §§ a,b (1964)	Mental retardation shall mean subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Mentally retarded person shall mean a person in whom there has been found, by comprehensive evaluation, a condition of mental retardation of such a nature and degree as to constitute a substantial, continuing, prospective, educational, vocational, ans social handicap.
ALABAMA CODE tit. 45, § 236 (1959)	The following are declared to be mental inferiors or deficients or feeble-minded: All persons of whatever age, who are deficient or inferior to the extent of being classed in either of the following groups of the feeble-minded. That is to say, idiots, imbeciles, feeble-minded or morons, and any of whom may be, or may not be epileptics, but not violent or insane. The terms "feeble-minded" and mental inferior or deficient"...shall include every person with such a degree of mental defectiveness from birth, or from an early age that he is unable to care for himself and to manage his affairs with ordinary prudence, or that he is a menace to the happiness or safety of himself or of others in the community, and requires care, supervision, and control either for his own protection or for the protection of others....
ALASKA STAT. tit. 47, ch. 30, § 340(10) (1962)	"mentally ill individual" means an individual having a psychosis or senile changes...or a mentally deficient and severely mentally retarded person whom the commissioner of health and welfare or his designee admits for treatment... ["mentally deficient and severely mentally retarded" not defined]
ARIZONA REV. STAT. tit. 8, § 421(A)(2)(1956)	A minor child may be eligible for admission to the colony if ...he is so mentally deficient that he is incapable of managing himself or his affairs, and his welfare requires the special care, training and education provided at the colony. ["mentally deficient" not defined]
ARKANSAS STAT. tit. 59, ch. 3, § 303(a)(2) (1965 Supp.)	A [mentally deficient person]...may be deemed eligible for admission to the Arkansas Children's Colony if...he is so mentally deficient that he is incapable of managing himself or his affairs, and his welfare requires the special care, training and education provided at the colony. ["mentally deficient" not defined]

STATE AND STATUTE	STATUTORY PROVISION
CALIFORNIA WELFARE & INST. CODE § 5590 (1965 Supp.)	..."mentally deficient persons" means those persons, not psychotic, who are so mentally retarded from infancy or before reaching maturity that they are incapable of managing themselves and their affairs independently, with ordinary prudence, or of being taught to do so, and who require supervision, control, and care, for their [sic] own welfare, or for the welfare of others, or for the welfare of the community. ... the terms "feebleminded" and "feeblemindedness" ...shall be construed to refer to and mean "mentally deficient" and "mental deficiency," respectively...
COLORADO REV. STAT. ch. 71, art. 1, § 1(1)(c)(1963)	"Mentally deficient person" shall mean a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease, or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs, or who by reason of this deficiency, for his own welfare, or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care. The terms, "idiot," "feeble-minded person," "mental incompetent," or "weak-minded person," shall hereafter be deemed to mean and be included within the words "mentally deficient person,"...unless the context otherwise indicates a mentally ill person.
CONNECTICUT GEN. STAT. tit. 17, ch. 305 (1960; 1965 Supp.)	mentally retarded [not defined]
DELAWARE CODE ANN. tit. 16, § 5526 (1964 Supp.)	Severely mentally retarded persons are those of any age deemed to be neither educable nor trainable in the public schools. ["mentally retarded" not defined]
FLORIDA STAT. ch. 393 (1965 Supp.)	mentally retarded and feeble-minded [not defined]

STATE AND STATUTE	STATUTORY PROVISION
GEORGIA CODE tit. 88, § 2502(a), (b) (1965 Supp.)	"Mental retardation" means a state of subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
	"Mentally retarded individual" means any person suffering from mental retardation.
tit. 88, § 501(a) (1965 Supp.)	"Mentally ill person"...shall include...any mental retardation... when due to or accompanied by mental illness or mental disease, or, in the case of any mental retardation, when the mentally retarded person is incapable thereby of making a satisfactory adjustment outside of a psychiatric hospital.
HAWAII REV. LAWS ch. 82, §§ 4,5 (1965 Supp.)	Any person who is found to be incapable of independent self-support and self-management in the community or to be incapable of attaining such self-support and self-management without proper treatment and training, and who is found to require institutional care, supervision, control, treatment and training for his own welfare or for the welfare of his family or for the welfare of the community and who is found to be mentally retarded...shall be subject to commitment...
	Mentally retarded persons...are persons: (a) who are afflicted with: (1) a deficiency of general mental development associated with chronic brain syndrome, or (2) a deficiency of intelligence arising after birth, due to infection, trauma, or other disease process, or (b) who are afflicted with general intellectual subnormality not due to known organic factors.
IDAHO CODE tit. 66 § 317(b)(3) (1965 Supp.)	"Mentally deficient or mentally retarded person"...shall mean a person or individual not psychotic, who is so mentally retarded from infancy or before reaching maturity, that he is incapable of managing himself or his affairs independently, with ordinary prudence, or of being taught to do so, and who requires supervision or control, and care for his own welfare, the welfare of others or the welfare of the community.

STATE AND STATUTE	STATUTORY PROVISION
ILLINOIS STAT. ch. 91-1/2 art. 1, § 1-9 (1965)	"Mentally Retarded Person"...means any person whose mental abilities have been arrested from birth, or whose mental development has been arrested by disease or physical injury occurring at an early age who requires care, treatment, detention and training in a hospital or under a guardian or conservator for his own welfare, or the welfare of others or of the community; provided that no [mentally ill] person in need of mental treatment shall be regarded as mentally retarded...
art. 1, § 1-18 (1965)	...the words..."feebleminded," or "mentally deficient"... shall mean..."mentally retarded"...
INDIANA STAT. tit. 22, § 1201(1),(2) (Burns 1966 Supp.) [see also tit. 22, §§ 1301(1), 1306(1) (1964)]	The term "mentally ill person" shall mean a person who is afflicted with a psychiatric disorder which substantially impairs his mental health, and, because of such psychiatric disorder, requires care, treatment, training or detention in the interest of the welfare of such person or the welfare of others of the community in which such person resides;
	The term "psychiatric disorder" means any mental illness or disease and shall include...any mental deficiency... ["mental deficiency" not defined]
IOWA CODE ch. 222, § 2(5) (1965 Supp.)	"Mental retardation" or "mentally retarded" means a term or terms to describe children and adults who as a result of inadequately developed intelligence are significantly impaired in ability to learn or to adapt to the demands of society.
ch. 218, § 95 (1965 Supp.)	...the following terms shall be considered synonymous:... "Mental defectives" and "mentally retarded";..."Feeble-minded" and "mentally retarded";..."Defectiveness" and "retardation"; "Idiot" and "mental retardate"...
ch. 226, §8 (1965 Supp.)	...The term "mental retardate" is restricted to persons foolish from birth, supposed to be naturally without mind.
KANSAS STAT. ch. 76 (1964)	mentally retarded [not defined]

STATE AND STATUTE	STATUTORY PROVISION
KENTUCKY REV. STAT. ch. 202, § 010(2) (1963)	"mentally defective person" means a person with a defect in mental development at birth, or at an early age, and which is of such a degree that he is incapable of caring for himself or managing his affairs and requires supervision, care, training, control or custody for his own welfare or for the welfare of others
LOUISIANA REV. STAT. tit. 28, § 2(4) (1950)	"Mental defective" means a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment, and discretion to manage himself and his affairs, and for whose own welfare or that of others, care, supervision, guidance, or control are necessary or advisable. The term includes feeble-minded, idiot and imbecile.
MAINE REV. STAT. tit. 34 (1964; 1965 Supp.)	mentally retarded [not defined]
MARYLAND CODE art. 26, §52(g)(1957)	"Feeble-minded child" means a child who has a level of intelligence sufficiently low that he is unable to compete with his fellows on equal terms or to manage his affairs with ordinary prudence.
art. 59 (1957; 1965 Supp.)	insane or idiotic or feeble-minded [not defined]
MASSACHUSETTS GEN. LAWS ch. 123, § 1 (1965)	"Mentally deficient" person, a person whose intellectual functioning has been abnormally retarded, or has demonstrably failed, the deficiency being manifested by psychological signs. "Mentally deficient" shall have the same meaning as the term "feeble-minded"...
MICHIGAN STAT. ANN. tit. 14, §844 (1965 Supp.)	The term "mentally handicapped" shall include morons, idiots, imbeciles and those as to whom congenital defects have produced the same deficiency...and whenever reference to "feeble-minded" is made...reference shall be deemed to be made to "mentally handicapped."

STATE AND STATUTE	STATUTORY PROVISION
MINNESOTA STAT. ch. 525 § 749(6) (1965 Supp.)	"Mentally deficient person" means any person, other than a mentally ill person, so mentally defective as to require supervision, control, or care for his own or the public welfare.
MISSISSIPPI CODE § 6764 (1952)	The term "feeble-minded"...shall apply to any and all persons with such a degree of mental inferiority from birth, or from infancy or early childhood, that they are unable to care for themselves, to profit by ordinary public school instruction, to compete on equal terms with others, or to manage themselves and their affairs with ordinary prudence, and consequently constitute menaces to the happiness or safety of themselves or of other persons in the community, and require care, supervision and control either for their own protection or for the protection of others. These persons denominated feeble-minded comprise those commonly called idiots, imbeciles and morons, or high grade feeble-minded persons....
MISSOURI REV. STAT. ch. 202 (1959; 1965 Supp.)	mentally deficient [not defined]
MONTANA REV. CODES tit. 80, § 2301 (2)(1965)	..."mental retardation" is a state of subnormal development of the human organism which results in the mental incapability of the person affected to adapt himself to the daily demands of his social environment.
NEBRASKA REV. STAT. ch. 83, § 219 (1958)	The words "feeble-minded person" shall mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs and of subsisting by his own efforts, or of being taught to do so, or that he requires supervision, control and care for his own welfare, or for the welfare of others, or for the welfare of the community, and who cannot be classified as an "insane person."

STATE AND STATUTE	STATUTORY PROVISION
NEVADA REV. STAT. ch. 433, §300(1) (1957)	mentally deficient, noneducable children [not defined]
ch. 435, § 030(1) (a)(1959)	...feeble-minded child [who]...by reason of deficient mental understanding,...is disqualified from being taught by the ordinary process of instruction or education...
ch. 62, § 040 (1)(c)(1963)	mentally defective child [not defined]
NEW HAMPSHIRE REV. STAT. ch. 171 (1964)	mentally deficient [not defined]
NEW JERSEY STAT. tit. 30, ch. 4, § 23 (1965 Supp.)	"Mental deficiency" shall mean that state of mental retardation in which the reduction of social competence is so marked that persistent social dependency requiring guardianship of the person shall have been demonstrated or be anticipated. "Mental retardation" shall mean a state of significant subnormal intellectual development with reduction of social competence in a minor or adult person; this state of subnormal intellectual development shall have existed prior to adolescence and is expected to be of life duration.
NEW MEXICO STAT. ch. 34, art. 3, § 1 (1965 Supp.)	..."mental defective" means any person not classified as insane but mentally underdeveloped or faultily developed, or mentally backward or retarded, to the degree that he is incapable of managing himself and his affairs, and requires supervision, care and control for his own welfare, or for the welfare of others, or for the welfare of the community, irrespective of whether any such person is capable of being trained to acquire skills useful to himself and others. Mental defectives may be classified as "trainable" and "untrainable."
NEW YORK MENTAL HYGIENE LAW § 2(9) (McKinney 1951)	"Mental defective" means any person afflicted with mental defectiveness from birth or from an early age to such an extent that he is incapable of managing himself and his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care and who is not mentally ill or of unsound mind to such an extent as to require his certification to an institution for the mentally ill...

STATE AND STATUTE	STATUTORY PROVISION
NORTH CAROLINA GEN. STAT. ch. 122, § 36(e) (1964)	The words "mentally retarded" shall mean a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment, and discretion to manage himself and his affairs, and for whose own welfare or that of others, supervision, guidance, care, or control is necessary or advisable.
NORTH DAKOTA CENTURY CODE tit. 25, ch. 01, § 01(2), (3) (1960)	"Feeble-minded person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing himself and his affairs and to require supervision, control, and care for his own or the public welfare; "Idiot" is restricted to a person supposed to be naturally without a mind.
OHIO REV. CODE ch. 5125, § 011 (1965 Supp.)	"Mentally retarded"...means having subnormal intellectual functioning originating in the developmental period prior to age eighteen and is characterized by reduced learning capacity including accompanying inadequate social adjustment as determined by comprehensive evaluation or as determined by a court of record...
OKLAHOMA STAT. tit. 56, § 302(d) (1966 Supp.)	The term "mentally retarded person"...means a person afflicted with mental defectiveness from birth or from an early age to such an extent that he is incapable of managing himself or his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control, or care and who is not mentally ill or of unsound mind to such an extent as to require his certification to an institution for the mentally ill...
OREGON REV. STAT. ch. 427, § 210(3) (1965)	"Mental retardation" is synonymous with "mental deficiency." [not defined]
PENNSYLVANIA STAT. ANN. tit. 50, § 1072(9) (Purdon 1954)	"Mental defective" shall mean a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment and discretion to manage himself and his affairs, and for whose welfare or that of others care is necessary or advisable. The term shall include "feeble-minded," "moron," "idiot" and "imbecile," but shall not include "mental illness," "inebriate" and "senile."

STATE AND STATUTE	STATUTORY PROVISION
RHODE ISLAND GEN. LAWS tit. 26, ch. 5 (1956)	feeble-minded [not defined]
SOUTH CAROLINA CODE OF LAWS tit. 32, § 1061 (1962)	...a "mentally defective person" or "mentally deficient person" is a person whose mental abilities have been defective or arrested before birth or at birth or whose mental development has been arrested by disease or physical injury occurring at an early age, in either case to such an extent that he lacks sufficient control, judgment and discretion to manage himself or his affairs, or who, by reason of this deficiency, for his own welfare or the welfare of others or of the community, requires training, supervision, guidance, care or control.
tit. 32, § 911(2) (1965 Supp.) [see also § 1095]	"Mentally defective person" or "mentally deficient person" or "mentally retarded person" means a person who, because of inadequately developed intelligence, is significantly impaired in his ability to learn and to adapt to the demands of society
SOUTH DAKOTA CODE tit. 30, § 0402 (1960 Supp.)	The term "mental retardation" is a state of subnormal development of the human organism in consequence of which the individual affected is mentally incapable of fully assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation. The terms "mental retardation" and "mental deficiency" shall be deemed synonymous.
TENNESSEE CODE tit. 33, § 302 (g) (1966 Supp.)	Mentally retarded individual or mentally deficient individual -- An individual who is not mentally ill but whose intellectual functions have been deficient since birth, or whose intellectual development has been arrested or impaired by disease or physical injury occurring before maturity and who, being unable to care for himself and manage his affairs, requires care, treatment and training in a hospital and school for his own welfare or the welfare of others or of the community.
TEXAS REV. CIVIL STAT. art. 3871b, § 3(1)(Vernon 1966 Supp.) [see also art. 5547-201, § 1.02(6)]	"Mentally retarded person" means any person, other than a mentally ill person, so mentally deficient from any cause as to require special training, education, supervision, treatment, care or control for his own or the community's welfare.

STATE AND STATUTE	STATUTORY PROVISION
UTAH CODE tit. 64, ch. 8, § 13 (1961)	All feeble-minded persons...whose defects prevent them from receiving proper instruction and training in the public schools, or whose defects prevent them from properly taking care of themselves, or who are a social menace, may be admitted to the school... ["feeble-minded" not defined]
VERMONT STAT. ANN. tit. 18, § 2401 (1965 Supp.)	Mental defectives: Persons included in the clinical classification of idiot, imbecile and moron.
VIRGINIA CODE tit. 37 § 1.1(2) (1966 Supp.)	"Mentally deficient" means any person afflicted with mental defectiveness to such extent that he is incapable of caring for himself or managing his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care
WASHINGTON REV. CODE tit. 72, ch. 33, § 020(1)(1962)	"Mental deficiency" is a state of subnormal development of the human organism in consequence of which the individual affected is mentally incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.
WEST VIRGINIA CODE § 2647a (1965 Supp.)	A "mentally retarded" person is one having an inadequately developed or impaired intellect, and who because thereof is significantly disabled in his ability to learn and to adapt to the demands of society.
WISCONSIN STAT. ch. 51, § 001(1) (1965)	...mental deficiency [is synonymous] with feeble-mindedness [not defined]
WYOMING STAT. tit. 9, § 442 (1959)	...To be feebleminded...a person must be one who, because of inadequate mental development existing from birth or from an early age, cannot be properly cared for outside an institution, or must be a child of school age who, because of inadequate mental development, cannot be properly trained in a public school. The term "feebleminded" shall be construed to include also "imbecile" and "idiot." No person shall be admitted to the training school who is insane or of unsound mind to such an extent as to require commitment...

STATE AND STATUTE	STATUTORY PROVISION
DISTRICT OF COLUMBIA CODE tit. 21, § 1101 (1966 Supp.V) [see also tit. 32, § 603 (1961)]	..."feeble-minded person" means a person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, or being taught to do so, and who requires supervision, control, and care for his own welfare, or for the welfare of others, or for the welfare of the community, and is not insane or of unsound mind to such an extent as to require his commitment...

I--B. TERMINOLOGY AND DEFINITIONS FOR INSTITUTIONALIZATION OF THE MENTALLY RETARDED

STATE	PRIMARY STATUTORY TERMS	SYNONYMOUS OR INCLUDED TERMS	EXCLUDED TERMS	BASIC DEFINITION OF PRIMARY STATUTORY TERMS	FURTHER DEFINITION OF STATUTORY TERM BY																		
						Cause			Disability				NEED FOR CARE										
													Requires					For Welfare or Happiness of			For Safety or Protection of		
					Origin [n.1]	any or unknown	disease or injury [n.2]	Duration [n.3]	Incompetency: unable to manage self or affairs	Social handicap: unable to adapt, adjust, participate, etc.	Educational handicap: unable to learn, attend public school, etc.	Vocational handicap: unable to support self, subsist, compete, etc.	Care	supervision, control, guidance	training, education	treatment	protection, detention, custody	Self	Others	Community	Self	Others	Community [n.5]
AAMD DRAFT ACT	mental retardation			subaverage general intellectual functioning	X			X		X	X	X											
ALABAMA	feeble-minded/mental inferior or deficient	idiot, imbecile, moron	violent or insane	mental defectiveness	X				X				X	X				X		X	X	X	X
ALASKA	mentally deficient and severely mentally retarded		psychosis or senile changes													X							
ARIZONA	mentally deficient								X				X		X			X					
ARKANSAS	mentally deficient								X				X		X			X					
CALIFORNIA	mentally deficient	feebleminded	psychotic	mentally retarded	X				X				X	X				X	X	X			
COLORADO	mentally deficient	idiot, feeble-minded, mental incompetent, weak-minded	mentally ill	intellectual functions deficient, or intellectual development arrested or impai	X		X		X				X	X	X		X	X	X			X	
CONNECTICUT	mentally retarded																						
DELAWARE	mentally retarded										X												
FLORIDA	mentally retarded/feeble-minded																						
GEORGIA	mental retardation			subaverage general intellectual functioning	X					X			X										
HAWAII	mentally retarded			deficiency of general mental development, deficiency of intelligence, or general intellectual subnormality		X	X		X			X	X	X	X	X		X	[n;4]X	X			
IDAHO	mentally deficient or mentally retarded		psychotic	mentally retarded	X				X				X	X				X	X	X			
ILLINOIS	mentally retarded	feebleminded, mentally deficient	mentally ill	mental abilities or development arrested	X		X						X		X	X	X	X	X	X			
INDIANA	mental deficiency												X		X	X	X	X		X			
IOWA	mental retardation	mental defective, feeble-minded, idiot		inadequately developed intelligence						X	X												
KANSAS	mentally retarded																						
KENTUCKY	mentally defective			defect in mental development	X				X				X	X	X		X	X	X				
LOUISIANA	mental defective	feeble-minded, idiot, imbecile	mentally ill	mental development retarded					X				X	X				X	X				
MAINE	mentally retarded																						
MARYLAND	feeble-minded/idiotic			low level of intelligence					X			X											
MASSACHUSETTS	mentally deficient	feeble-minded		intellectual functioning abnormally retarded or demonstrably failed																			
MICHIGAN	mentally handicapped	moron, idiot, imbecile, feeble-minded		deficiency	X	?																	
MINNESOTA	mentally deficient		mentally ill	mentally defective									X	X				X		X			
MISSISSIPPI	feeble-minded	idiot, imbecile, moron		mental inferiority	X				X		X	X	X	X				X		X	X	X	X
MISSOURI	mentally deficient																						
MONTANA	mental retardation			subnormal development of the human orga						X													
NEBRASKA	feeble-minded		insane	mental defectiveness	X				X			X	X	X				X	X	X			
NEVADA	mentally deficient/feeble-minded/mentally defective			deficient mental understanding							X												
NEW HAMPSHIRE	mentally deficient																						
NEW JERSEY	mental deficiency, mental retardation			significant subnormal intellectual development	X			X		X													

I-8. TERMINOLOGY AND DEFINITIONS FOR INSTITUTIONALIZATION OF THE MENTALLY RETARDED

STATE	PRIMARY STATUTORY TERMS	SYNONYMOUS OR INCLUDED TERMS	EXCLUDED TERMS	BASIC DEFINITION OF PRIMARY STATUTORY TERMS	FURTHER DEFINITION OF STATUTORY TERM BY																	
						Cause			Disability				NEED FOR CARE									
													Requires					For Welfare or Happiness of			For Safety or Protection of		
					Origin [n.1]	any or unknown	disease or injury [n.2]	Duration [n.3]	Incompetency: unable to manage self or affairs	Social handicap: unable to adapt, adjust, participate, etc.	Educational handicap: unable to learn, attend public school, etc.	Vocational handicap: unable to support self, subsist, compete, etc.	Care	supervision, control, guidance	training, education	treatment	protection, detention, custody	Self	Others	Community	Self	Others	Community [n.5]
NEW MEXICO	mental defective		insane	mentally underdeveloped or faultily developed, or mentally backward or retarded					X				X	X				X	X	X			
NEW YORK	mental defective		mentally ill or of unsound mind	mental defectiveness	X				X				X	X				X	X	X			
NORTH CAROLINA	mentally retarded		mentally ill	mental development retarded					X				X	X				X	X				
NORTH DAKOTA	feeble-minded/idiotic		mentally ill	mentally defective					X				X	X				X		X			
OHIO	mentally retarded			subnormal intellectual functioning	X					X	X												
OKLAHOMA	mentally retarded		mentally ill or of unsound mind	mental defectiveness	X				X				X	X				X	X	X			
OREGON	mental retardation	mental deficiency																					
PENNSYLVANIA	mental defective	feeble-minded, moron, idiot, imbecile	mentally ill, inebriate, senile	mental development retarded					X				X					X	X				
RHODE ISLAND	feeble-minded																						
SOUTH CAROLINA	mentally defective or mentally deficient/mentally retarded			mental abilities defective or arrested, o mental development arrested	X		X		X	X	X		X	X	X			X	X	X			
SOUTH DAKOTA	mental retardation	mental deficiency		subnormal development of the human organism					X	X		X											
TENNESSEE	mentally retarded or mentally deficient		mentally ill	intellectual functions deficient, or intellectual development arrested or impai	X		X		X				X		X	X		X	X	X			
TEXAS	mentally retarded		mentally ill	mentally deficient		X							X	X	X	X		X		X			
UTAH	feeble-minded								X		X												X
VERMONT	mental defective	idiot, imbecile, moron																					
VIRGINIA	mentally deficient			mental defectiveness					X				X	X				X	X	X			
WASHINGTON	mental deficiency			subnormal development of the human organism					X	X		X											
WEST VIRGINIA	mentally retarded			inadequately developed or impaired intellect						X	X												
WISCONSIN	mental deficiency	feeble-mindedness																					
WYOMING	feeble-minded	imbecile, idiot	insane or of unsound mind	inadequate mental development	X						X		X										
DISTRICT OF COLUMBIA	feeble-minded		insane or of unsound mind	mental defectiveness	X				X				X	X				X	X	X			
						2	5		25	10	10	7	27	19	10	6	4	25	17	18	2	3	3
52	retarded-23; deficient-19; feeble-minded-11; defective-8; idiotic-2; other terms-2.	feeble-minded-9; idiot-9; imbecile-7; moron-5; deficiency-3; defective-1; other terms-2.	mentally ill-11; insane-5; unsound mind-4; psychotic-3; senile-2; other terms-2.		19	6		2	35									28					

Chart I-B: FOOTNOTES

1. Mental retardation must originate: in or during the developmental period -- A.A.M.D. Draft Act, Georgia, Ohio ("prior to age eighteen"); at or from birth or an early age -- Alabama, Kentucky, Mississippi ("from birth, or from infancy or early childhood"), Nebraska, New York, Oklahoma, Wyoming, D.C.; from infancy or before reaching maturity-- California, Idaho; from or since birth -- Colorado, Illinois, Michigan ("congenital defects"), South Carolina ("before birth or at birth"), Tennessee; prior to adolescence -- New Jersey.

2. Disease or physical injury resulting in mental retardation must occur: "after birth" -- Hawaii; "at an early age" -- Illinois, South Carolina; "before maturity" -- Tennessee.

3. Mental retardation must constitute a "continuing, prospective" handicap -- A.A.M.D. Draft Act; mental retardation must be "expected to be of life duration" -- New Jersey.

4. "...or for the welfare of his family" -- Hawaii.

5. "Feeble-minded" includes a person who is: "a menace to the happiness or safety of himself or of others in the community, and requires care, supervision, and control either for his own protection or for the protection of others" -- Alabama, Mississippi; "a social menace" -- Utah.

III. INSTITUTIONALIZATION PROCEDURES

A. Classification

Procedures for institutionalization of the mentally retarded are almost entirely the creations of state legislation, and the statutes present almost as many legislative approaches as there are jurisdictions. Some states have followed the statutes of other states, or various model acts, in drafting their procedures, but these unifying influences have not produced any significant degree of national uniformity. The several jurisdictions continue to vary widely not only in their formulations of individual procedures,[1] but also in their combinations of multiple procedures.[2]

This diversity presents considerable difficulty in classifying the procedures, since, in the aggregate, they form a range of subtle variations among which any categorical divisions must be more or less arbitrary. Yet some classification is essential for meaningful analysis, and it is possible to differentiate the statutory procedures according to several salient characteristics. Most important among these characteristics are: (1) the purpose or duration specified for institutionalization; (2) the parties authorized to apply for or initiate institutionalization; (3) the authorities designated to decide the advisability of institutionalization; and (4) the degree of compulsion sanctioned to enforce institutionalization.

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[1] Besides their other substantive differences, procedures for the mentally retarded also differ significantly with respect to their relationship to procedures for the mentally ill. See Appendix A for a comparison of separate and combined procedures.

[2] See Appendix A. Counting only institutionalization procedures which are tabulated in the charts of this report, there are 10 jurisdictions with only one available procedure, 25 with two, 11 with three, and 5 with four. Thus, the 51 U.S. jurisdictions provide a total of 113 procedures.

For purposes of this report, these criteria have been used in several ways. First, because provisions for short-term, emergency or observational institutionalization seem to be designed more for the mentally ill than for the mentally retarded, the first criterion has been used to exclude procedures for which such limits of purpose or duration are specified.[3] For long-term or indeterminate institutionalization, the law has traditionally distinguished between voluntary admission, relying upon private initiative, and voluntary commitment, requiring judicial intervention. Accordingly, the second criterion has been used to select voluntary procedures by which a prospective patient, or someone legally authorized to act in his behalf, may effect his institutional admission.[4] And the third criterion has been used to classify judicial procedures whereby a court, or a commission with judicial representation and powers, may determine a person's need for institutionalization and, if appropriate, issue an order therefor.

These voluntary and judicial categories are equally extensive, and together they comprise the great majority of institutionalization procedures.[5] But there are several procedures which do not fit either category. The only feature common to the latter procedures is the provision in all of them for medical or psychological certification as a prerequisite for institutional admission. Therefore, on the basis of the third classification criterion, these certification procedures have been collectively treated as a single, intermediate category. It should be recognized, however, that in many respects this category is not mutually exclusive in relation to the other two. Voluntary or judicial procedures may also include provisions for expert certification, and certification procedures may incorporate features similar to those found in either of the other categories.[6]

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[3] Even though no limited purpose is expressed, procedures which may result in institutionalization limited to a maximum of thirty days or less have been excluded. However, this exclusion does not apply to provisions for temporary institutional observation which are integrated with procedures for long-term or indeterminate institutionalization; such "pre-admission" or "pre-commitment" observations are noted in connection with the procedures to which they are attached.

[4] For more specific criteria used to classify these procedures, see note a, Chart II.

[5] See Appendix A.

It is not very meaningful, and indeed may be confusing, to classify institutionalization procedures according to their attendant degrees of compulsion. This criterion inevitably involves consideration of the state of mind of prospective patients, and such subjective factors are not determined by statutory procedures. Judicial commitment proceedings may be contested, or the prospective patient may acquiesce. Even though some certification procedures cannot be used over the patient's objection, institutionalization may conceivably be accomplished with or without a patient's actual cooperation. And the state of mind of a minor or adjudicated incompetent is irrelevant to his voluntary admission by a parent or guardian. Similarly, procedures cannot realistically be classified according to the compulsion which may be associated with institutional confinement, as opposed to admission processes. Provisions for release or judicial review at the request of an institutionalized patient are not reliable distinctions, since a patient may not know, understand, or be able to exercise these rights.

B. Voluntary Admission

1. Applicants and Patients

Procedures classified as voluntary may apply to three quite different situations, depending upon the relationship between the prospective patient and the person who applies for his institutionalization. The admission of a retarded child may be requested by his parent or guardian; a retarded person may apply for his own admission; or the admission of a retarded adult may be initiated by someone acting in his behalf. All three situations may be authorized by a single statutory procedure, or the procedure may include only one or two; procedures may also cover both voluntary and non-voluntary situations.

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[6] See note a, Chart III.

a.) Applications for Minors

It seems likely that a substantial number of institutionalized retardates are admitted in situations of the first type.[7] It may be surprising, however, to find this situation explicitly and extensively treated in the statutes, since the plenary powers inherent in the parent or guardian of a minor surely include authority to institutionalize the child for necessary or desirable care. Nevertheless, most states provide for this situation in their statutory procedures.[8] Are these provisions merely redundant codifications of existing parental and guardianship rights, or are they necessary protective circumscriptions of those rights? One answer to this question was given by the Task Force on Law of the President's Panel on Mental Retardation:[9]

> We believe that no special legislation is needed when a retarded child is sent to an institution by his parent or by a properly empowered guardian. We would rely on general laws governing parental neglect to ensure protection of the child. Additional protection should be provided by the state's careful examination of the administration of all facilities and institutions claiming to look after the mentally retarded....

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[7] See Appendix B.

[8] See "Application by Parent, Guardian, or Other Interested Party -- for Minor" and "--for Any" columns, Chart II; notes 1, 15, Chart II. As indicated therein, 41 states have procedures whereby a parent or guardian may apply for the admission of a minor (or of any patient, minor or adult). In addition, in Alaska and perhaps in Minnesota, a minor may apply for his own admission with the consent of his parent or guardian. See also "Application by Interested Party" column, Chart III, for the many certification procedures under which a parent or guardian may apply.

[9] Report of the Task Force on Law, The President's Panel on Mental Retardation 28-29 (Washington, 1963).

These procedural statutes apply predominately to public institutions,[10] without, of course, precluding similar kinds of admission to private institutions. It may be, therefore, that they are intended more as regulations of state facilities than authorizations of parental applications or protections of retarded children. As such, they might usefully be incorporated in statutes governing institutional administration, or at least stated separately from other admission procedures.[11]

The statutes of only six states explicitly deal with the attainment of majority by a patient voluntarily admitted as a minor.[12] In five of these states the patient must be either discharged or committed at majority, but the New Jersey statute expresses the additional option of a new voluntary application by the patient or his guardian.[13]

b.) Applications by Patients

The second situation included in the category of voluntary procedures represents its purest form -- the admission of a patient upon his own application. Twenty-one states now provide for such admission in their statutes,[14] and there is every indication that this number may be expected to increase. Here again, the necessity of statutory authorization may be questioned, but the answer appears to lie in doubts regarding the capacity of retarded persons to determine their own institutionalization;

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[10] See "Place" columns, Chart II.

[11] Only eight states have separate voluntary procedures applicable only to minors. See "Age Limits" column, Chart II. But the voluntary procedures of another 19 states make separate provision for the admission of minors.

[12] See "Majority Provisions" column, Chart II.

[13] See note 58, Chart II. The California statute also provides a voluntary option, but this provision has been administratively negated. See note 25, Chart II.

[14] See "Application by Patient" column, Chart II.

> Generally speaking, this trend [toward voluntary admission] is to be encouraged in the field of mental retardation. But it is unrealistic to assume that most of the retarded have the intelligence and understanding to make a "voluntary" decision in a matter of this kind. We must rely on the discretion and good faith of the superintendents of facilities for the retarded to accept only those retarded adults who are capable of making such a decision.[15]

Accordingly, most of the existing provisions specify that the applicant must be either an "adult" or of a certain age, which may or may not be the state's age of majority. Several statutes go beyond age qualifications and in some way require that the applicant be "competent. In some instances it is possible that general civil competency is required,[16] but other statutes specify that a retardate must be "competent to make application."[17] However, these statutory specifications may be self-defeating if all retarded persons are elsewhere defined as incompetent, or if they are so considered by officials charged with administration of the statutes.[18]

c.) Applications for adults

The third voluntary situation -- application for admission of a retarded adult by a person legally empowered to act in his behalf -- is not generally differentiated in the statutes. Only five states have voluntary procedures with separate provisions for the admission of adult retardates on the application of other persons.[19] Only four of these provisions restrict potential applicants to guardians or other legal fiduciaries or custodians,[20] and only three limit prospective patients to "incompetent" adults. On the other hand, applications on behalf of adult retardates are permitted under the procedures of most states.[21] These procedures do not limit applicants to parties otherwise empowered to act for the prospective patient, but in 27 states guardians or other fiduciaries are specifically included among the class of authorized applicants.[22]

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[15] Report of the Task Force on Law, The President's Panel on Mental Retardation 29 (Washington, 1963).

[16] For an interesting example, see the provisions of N.J. STAT. tit. 30, ch. 4, § 25.1 (1965 Supp.), incorporating the definitional distinctions between "mentally retarded" and "mentally deficient" persons of § 23.

[17] See note 20, Chart II.

[18] See, e.g., the interpretation given to the California statute by that state's Dep't of Mental Hygiene, as cited note 21, Chart II.

[19] See "Application by Parent, Guardian, or Other Interested Party -- for Adult" column, Chart II; note 26, Chart II.

In the absence of specifications of the age of prospective patients, it is not always clear whether the term "guardian" refers to minority, incompetency, or both. The ambiguity is confounded by the frequent juxtaposition of this term and "parent" or "parents" in statements such as "A mentally retarded person may be admitted upon the application of his parent or guardian . . ." Although a case could be made for any of several possible readings, the most tenable interpretation seems to be that such statements authorize application by a parent or any properly empowered guardian on behalf of any retardate, minor or adult.

Next to guardians, parents are most frequently designated as permissible applicants in procedures applicable to adults,[23] and for half of such procedures no applicants other than parents, guardians, or other custodians are authorized.[24] Insofar as these procedures may permit the institutionalization of adult children on parental application, they represent an extension of the traditional category of voluntary admission. The extension is apparently based on an assumption that, at least for purposes of institutionalization, the natural guardianship of parents continues beyond the age of majority. Such an assumption not only is technically inaccurate, but also seems to slight the interests of adult retardates. Minimal protection of these interests would appear to require more explicit and perhaps separate procedures for institutionalization of adults on parental application.[25]

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[20] Here, as elsewhere in this analysis of the statutes, phrases such as "person or agency having [or "entitled to"] his custody" are considered to refer to legal custodians whose powers include institutional placement of their charges.

[21] See "Application by Parent, Guardian, or Other Interested Party -- for Any" column, Chart II; note 1, Chart II. See also "Application by Interested Party" column, Chart III, for the many certification procedures under which a guardian or other fiduciary or custodian may apply.

[22] This category includes 17 voluntary procedures cited in the first paragraph of note 1, Chart II, and ten certification procedures tabulated in Chart III (Alaska, Kentucky, Louisiana, Maine, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin).
In addition, voluntary or certification procedures of another five states (Illinois, Indiana, Maryland, Mississippi, and Tennessee) would presumably permit a guardian to apply as a "friend" or perhaps a "relative" of the prospective patient.

[23] Parents are specifically authorized applicants in 21 procedures: one voluntary procedure limited to adults, 17 voluntary procedures applicable to minors or adults, and three certification procedures.

Even more questionable are those procedures which combine voluntary situations with others in which adult retardates may be institutionalized on the application of relatives, friends, officials, or "any person."[26] Procedures designed for the latter situations usually provide important safeguards against improper institutionalization,[27] and these safeguards may be omitted or weakened for procedures which also cover voluntary situations. (The combined procedures frequently retain a "voluntary" label in the statutes.) On the other hand, where these safeguards are included in procedures which refer to both voluntary and non-voluntary situations, they may unduly encumber voluntary applications.

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[24] Of 38 voluntary or certification procedures which may be used in 35 states for the institutionalization of adult retardates, 19 procedures of 19 states so limit the class of possible applicants.

[25] Because of the relatively small number of retardates institutionalized as adults (see Appendix B), administrative costs would not seem to constitute a significant obstacle to special guardianship or admission procedures.

[26] Nineteen procedures in 18 states enable some applicants of the latter class to apply for admission of adults. Thirteen of these procedures also authorize applications by guardians (11) or parents (6).

[27] See the discussion of certification procedures at Section III.C.2. and 3. *infra*.

2. Procedures and Criteria

Although safeguards against improper institutionalization may theoretically be considered more important to some voluntary situations then they are to others, their actual occurrence in the statutes is not correlated with different types of voluntary procedures. For example, more than a third of the voluntary procedures require applications for admission to be supported by medical or psychological certification,[28] but these procedures are otherwise undifferentiated. Certification requirements may accompany provisions for the institutionalization of minors, provisions authorizing applications by prospective patients, provisions applicable to adults, or various combinations of these provisions. The same may be said of less frequent requirements of pre- or post-admission mental examinations to be conducted or arranged by institutions.[29] Perhaps these safeguards are utilized as much or more to defend crowded institutions, as they are to protect retarded persons, from unwarranted admissions.[30]

Voluntary admission is almost always discretionary; the patient must be approved by the superintendent or other authority of the admitting institution, or accepted by a state agency or official for assignment to a residential facility.[31] Approximately one-fourth of the voluntary procedures are applicable to private as well as public facilities,[32] and several of these procedures provide that a state institution "shall," whereas a private institution "may" admit voluntary patients. But even these mandates for state institutions are often qualified by express conditions such as the "suitability" of patients and the availability of accommodations.

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[28] See "Certification" columns, Chart II.
Of course, this requirement is also present in certification procedures which may apply to voluntary situations.

[29] See "Admission Criteria - Mental Examination" columns, Chart II.

[30] Of course, pre-admission certification or examination may also fulfill the recommendation that "diagnosis and evaluation should take place before admission and be followed promptly by treatment when the patient is received." *A Proposed Program for National Action to Combat Mental Retardation; Report of the President's Panel on Mental Retardation* 197 (Washington, U.S. Gov't Printing Office, 1962). But this objective does not seem to be the primary reason for including these features in statutes which authorize voluntary admissions.

For about half of the voluntary procedures, admission is explicitly subject to the "availability of suitable accommodations" or a similar condition.[33] Such a condition may be implied in most statutes which omit it, but some of these statutes may be intended to give eligible retardates a right to be voluntarily admitted to public institutions. Aside from requiring that a patient must be "mentally retarded," "mentally deficient," "mentally defective," or "feeble-minded," and thereby incorporating any statutory definitions of these terms, most voluntary procedures do not cite specific criteria for admission. Eligible patients are generally designated merely as "suitable persons" or "proper subjects" for admission, although several statutes give admission preference to "women of child-bearing age" or to young, indigent, or dangerous persons.[34] In a few of the states with multiple institutionalization procedures, there are indications in the statutes that judicial commitments take precedence in admission over voluntary applications.[35] Also in some of these states voluntary admission is expressly limited to persons for whom judicial commitment is not deemed necessary or preferable, or who are considered "suitable for voluntary detention."[36] These limitations indicate that admission criteria may be affected by discharge procedures, especially provisions for the release of voluntary patients upon request.

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[31] See "Admission -- Approval by --" column, Chart II.

[32] See "Place" columns, Chart II.

[33] See "Admission Criteria -- Available Accommodations" column, Chart II.

[34] See "Admission Criteria -- Preference to --" column, Chart II.

[35] See, e.g., VA.CODE tit. 37, § 113 (1966 Supp.), as cited note 68, Chart II.

3. Release and Discharge

a.) Release on Request

About two-thirds of the voluntary procedures provide for release of a patient upon request to the institution. Parties authorized to request release roughly correspond to those authorized to apply for admission, although release provisions are generally less specific as to the situations which they cover. For example, all but two of the 19 provisions which permit a patient to request his release[37] appear in procedures which also authorize a patient to apply for his own admission. But whereas the admission authorizations are usually qualified by conditions of age and competency,[38] only three of the release authorizations are so qualified.[39] Since almost all of these procedures provide alternatively for voluntary admission on the application of other persons on behalf of patients, the question raised by the accompanying release provisions is whether they authorize requests by minor or incompetent patients. Five states expressly answer the question for minors by permitting or requiring the institution to condition the patient's release upon the consent of his parent or guardian.[40] The New Jersey statute authorizes a patient to request release only if he was admitted "on his own application or request."[41]

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[36] These statutory provisions are in contrast to those which limit judicial procedures to situations where "voluntary admission cannot be accomplished," or which give respondents in judicial proceedings an option of voluntary admission. See "Special Criteria for Commitment" column, Chart IV-B.
In the absence of such legislative preferences, regulations may establish priorities among a state's statutory procedures. See, e.g., the regulatory provisions of Minnesota and Wisconsin cited in notes 44, 72, Chart II, respectively.

[37] See "Release on Request -- Request by Patient" column, Chart II.

[38] See Section III.B.1.b. supra.

[39] The qualifications of California, Michigan, and New Jersey are indicated in the "Release on Request -- Request by Patient" column, Chart II. Similar qualifications may be implied by the Connecticut statute's restrictions on requests by persons other than the patient.

Only three release provisions are limited to requests by patients. Nine states specially provide for requests on behalf of a minor patient, most often by a parent or guardian, and in four of these no other requests are authorized.[42] The release of any patient, including a minor, may be requested in 19 states by any member of a designated class, usually limited to the patient's parent or guardian or other relatives, fiduciaries, or custodians.[43] For the eight procedures in which such requests are the only ones authorized, voluntary admission is also limited to applications by a similar class of persons other than the patient. Six states permit or require the institution to condition the patient's release upon his consent, but five of these provisions apply only if the patient was admitted on his own application.[44]

After a request is submitted, release must be effected "forthwith" or "promptly" in six states. In the remaining states the institution may detain the patient for a certain period ranging from three days to six months.[45] These notice requirements are undoubtedly designed to permit the institution to examine the patient and to determine the advisability of involuntary institutionalization. Although the alternatives are not always specified, most provisions state that at or before the conclusion of the specified period the superintendent must either discharge the patient or petition the appropriate court for commitment.[46] A few statutes, however, indicate that the superintendant may refuse to discharge the patient, whereupon the person requesting release has the burden of initiating judicial proceedings.[47]

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[40] See "Release on Request -- Consent of Parent or Guardian for Minor" column, Chart II.

[41] N.J. STAT. tit. 30, ch. 4, § 107.3(2) (1965 Supp.)

[42] See "Release on Request -- Request by Parent, Guardian, or Other Interested Party for Minor" column, Chart II; note 24, Chart II.
Three of the four provisions limited to requests on behalf of minors occur in procedures under which only minors may be admitted and patients must be discharged or committed at majority.

[43] See "Release on Request -- Request by Parent, Guardian or Other Interested Party for Any" column, Chart II; note 4, Chart II.
Only the New Jersey procedure specifically provides for requests on behalf of adult patients.

[44] See "Release on Request -- Consent of Patient when Request is by Another" column, Chart II.

Provisions for involuntary extension as a consequence of requests for release are closely related to policy decisions regarding the scope of voluntary institutionalization. Since extension provisions are primarily intended to prevent the release of dangerous patients or patients incapable of determining their own best interests, they are necessary unless admission criteria and evaluations are designed to exclude such persons from voluntary admission, or unless periodic re-evaluations are utilized to remove patients from voluntary status whenever there is sufficient deterioration in their mental or social capacities.[48] In three states, however, the statutes explicitly forbid the initiation of commitment proceedings unless a request for release of a voluntary patient has been submitted.[49] The latter provisions are presumably intended to insulate voluntary patients from the threat of involuntary commitment, but it is conceivable that the provisions may also discourage such patients from requesting release.

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[45] See "Release on Request -- Time for Release" column, Chart II. Authorized periods of detention are between three and ten days in 13 states, between 15 and 30 days in nine, and more than 30 days in only two.

[46] See "Release on Request -- Extension by Commitment" column, Chart II. Under many of these provisions the detention period following a request for release may be extended if the superintendent or the court considers additional time necessary for the initiation of commitment proceedings. And most statutes provide that an institutionalized patient may not be discharged during the pendency of such proceedings.

[47] See note 12, Chart II.

In a few states the right to obtain release upon request is also affected by provisions for a required minimum period of voluntary institutionalization.[50] The Alaska statute requires an initial period of 30 days, and the New York provision permits an institution to reject requests for release submitted sooner than 60 days after admission. Idaho legislation authorizes an institution to require a patient seeking his own admission to agree to a minimum stay of nine weeks, and in Wyoming a similar contract for an initial six months is required of parents or custodians applying for the admission of children.[51] The latter contractual approaches are of questionable validity and necessity. Regardless of competency questions, it seems probable that a patient's contract may not constitutionally be enforced if it deprives him of his liberty. Similarly, contracts by parents, guardians, or other fiduciaries are enforceable only if they are for the demonstrable benefit of their children or wards. If, on the other hand, a certain interval of institutionalization is advisable to assure initial diagnosis and evaluation, statutory authorization or requirement of a reasonable minimum appears to be sufficiently justified on grounds of public policy, without recourse to contractual obligations.

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[48] Cf. MD. CODE art. 59, § 37 (1965 Supp.), as cited note 20, Chart II. See also the provisions for periodic review tabulated in Chart V-E.

[49] See note 11, Chart II.

[50] See "Minimum Duration" column, Chart II.

[51] The Idaho and Wyoming provisions are quoted in note 32, Chart II.

Statutory rights to release may be empty formalities unless voluntary patients, or their representatives, know of these rights and are able to exercise them. One method of insuring this knowledge and ability is to require institutional authorities to provide information and assistance. Five states specifically incorporate such requirements in their voluntary procedures.[52] Active assistance is not always required, however, and even the furnishing of information is dependent upon patients' requests in two of these states. Additional and stronger requirements would appear warranted to effectuate provisions for release on request, as well as other rights of voluntary patients. It seems obvious that the need for information and assistance is even greater in those states in which voluntary patients' rights to habeas corpus or other judicial proceedings may constitute their only or alternative means of obtaining release. In such cases legal counsel is almost essential for adequate preparation of a petition and effective presentation of a case.

b.) Administrative Discharge

Although legislation presently is effect in most states seeks to prevent improper admission and detention of patients, this concern is inevitably diminished by the crowded conditions of most institutions for the mentally retarded. One important objective of the current emphasis upon non-residential services for the retarded is to facilitate the discharge of institutionalized patients. Provisions for administrative discharge thus assume considerable significance as means for institutions to control their populations.

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[52] See "Patient Informed of Right to Release" column, Chart II. In addition to the five statutes with explicit requirements, the California statute guarantees patients access to copies of the relevant statutes. The Tennessee provision for information and assistance is limited to the right of habeas corpus since the statute does not provide for patients' release upon request.

Of the 44 states with voluntary admission procedures, all but six expressly provide for administrative discharge of patients so admitted.[53] A few of these provisions authorize peremptory discharge or fail to specify discharge criteria, but in most states discharge must be warranted by the patient's "mental condition," when he is "no longer in need" of institutionalization, or when release would be "in his best interest," "to his benefit," or "for this welfare."[54] Obviously, the latter criteria depend not only on the patient's "condition," but on the ability and willingness of the patient's family and community to provide continuing care and habilitation.

Several statutes provide alternatively for patients' discharge which would "contribute to the most effective use" of the institution.[55] Although the manner and extent to which these provisions are used are not known, they appear to authorize the displacement of voluntary patients, perhaps by more severely retarded patients, or perhaps by judicially committed patients. Here again, application of the statutory criterion may depend upon the role of the institution in relation to other available services and facilities.

Discharge is usually made a function of superintendents or heads of institutions for the retarded. Several discharge provisions, however, also require the approval of the state agency or official which supervises the particular institution, and a few provide for discharges to be reported to such an agency. Especially for minor patients, several statutes require the discharging institution to notify interested parties who are responsible for the patient, who made the original admission application, or who object to the discharge.

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[53] See "Administrative Discharge" columns, Chart II.

[54] See "Administrative Discharge -- Patient's Benefit or Condition" column, Chart II.

[55] See "Administrative Discharge -- Other Criteria" column, Chart II.

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II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED [n. a]

STATE AND STATUTE	Age Limits	APPLICATION					CERTIFICATION			ADMISSION								PLACE		Minimum Duration	Patient Informed of Right to Release	RELEASE ON REQUEST								Majority Provisions	ADMINISTRATIVE DISCHARGE	
		By Patient	By Parent, Guardian or Other Interested Party			Required to be Written	By	When Executed		Approval By			Criteria					Public Institution	Private Institution			Request			Required to be Written	Consent		Time for Release	Extension by Commitment		Patient's Benefit or Condition	Other Criteria
			For Minor	For Adult	For Any			After Examination	Before Application or Admission	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	Preference to	Mental Examination							By Patient	By Parent, Guardian, or Other Interested Party			Of Patient When Request is by Another	Of Parent or Guardian for Minor					
															By	When Conducted: Before Admission	After Admission						For Minor	For Any								
AAMD DRAFT ACT Art. 8 (1966)		§c(1)			§c(1) [n.1]		§c(2); art. 2,§h; art.5,§c evaluation center team [n.2]		§c(2) within three months	§c			§c(3)					§c				§h(3) if of full age and competent		§h(2) [n.3,6]	§h(2), (3) [n.3]			[n.3]	[n.3]		§h(1)	§h(6) released contrary to advice; absent without authorization for thirty days
ALABAMA (no provision)																																
ALASKA STAT. (1962) Title 47, ch.30 [n.5,6]		§020 (1)	§020 (1) consent of parent or guardian		[n.6]		[n.6]			§020 (1)		§340 (10)			§§040(d), 340(3) physician [n.7]		§040(e) within 48 hours	§§020 (1), 340(6) [n.8]	§§020 (1), 340(6) [n.8]	§050 (a) 30 days	§050 (b)	§050 (a)		§§050 (a), 340(8) [n.4]	§050 (a) [n.9]	§050 (a)(1) [n.10]	§050 (a)(2) if patient under 18	§050(a) if 30 days after admission, immediately	§050 (a)(3) [n.11, 12]		§§040 (b), 200, 220	
ARIZONA REV.STAT.(1956) Title 8 [n.13]	§§421 (A), 422 (A) minor [n.14]		§422 (A) [n.15]			§422 (A)					§§422 (A), 429							§422 (A)													§427	
ARKANSAS STAT.(1965 Supp.) Title 59	[n.16]				§304 (a) [n.1]	§304 (a)					§305 [n.17]		§305 (a)		§305(a) two physicians; (optional) one or more psychologists, psychiatrists, or other physicians [n.18]	§305 (a)		§ 305		§305 (b) such period as board deems necessary				§309(a) [n.4]	§309 (a)			§309(a) after 30 days' notice, any time				
CALIFORNIA WELFARE & INSTITUTIONS CODE (1965 Supp.) [n.13,19]		§6050 if adult and competent [n.20, 21]	§6050 [n.15]			§6050				§6050					[n.22]		§6621 within three days [n.22]	§6050	[n.12]		§6016 access to statutes [n.23]	§6050 if adult	§6050 [n.24]		§6050			§6050 no more than seven days	§6050 if patient is adult	§6050 discharge or voluntary application as adult [n.25]		§7013 if after one month, peremptory
COLORADO REV.STAT.(1963) Ch.71,art.1		§2(1) if 18 or over	§2(1) under 18 [n.15]							§2(1)								§§1(2) (b), 2(1)	§§1(2) (b), 2(1)			§2(3) (a)		§2(3) (a) [n.4]	§2(3) (a)	§2(3) (b) [n.10]	§2(3) (c)	§2(3)(a) within five days	§2(3) (d)		§2(2)	

II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED [n. a]

STATE AND STATUTE	Age Limits	APPLICATION: By Patient	APPLICATION: By Parent, Guardian, or Other Interested Party: For Minor	APPLICATION: By Parent, Guardian, or Other Interested Party: For Adult	APPLICATION: By Parent, Guardian, or Other Interested Party: For Any	APPLICATION: Required to be Written	CERTIFICATION: By	CERTIFICATION: When Executed: After Examination	CERTIFICATION: When Executed: Before Application or Admission	ADMISSION: Approval By: Superintendent or Head of Institution	ADMISSION: Approval By: Board or Staff of Institution	ADMISSION: Approval By: State Officer or Agency	ADMISSION: Available Accommodations	ADMISSION Criteria: Preference to	ADMISSION Criteria: Mental Examination: By	ADMISSION Criteria: Mental Examination: When Conducted: Before Admission	ADMISSION Criteria: Mental Examination: When Conducted: After Admission	PLACE: Public Institution	PLACE: Private Institution	Minimum Duration	Patient Informed of Right to Release	RELEASE ON REQUEST: Request: By Patient	RELEASE ON REQUEST: Request: By Parent, Guardian, or Other Interested Party: For Minor	RELEASE ON REQUEST: Request: By Parent, Guardian, or Other Interested Party: For Any	RELEASE ON REQUEST: Request: Required to be Written	RELEASE ON REQUEST: Consent: Of Patient When Request is by Another	RELEASE ON REQUEST: Consent: Of Parent or Guardian for Minor	RELEASE ON REQUEST: Time for Release	RELEASE ON REQUEST: Extension by Commitment	Majority Provisions	ADMINISTRATIVE DISCHARGE: Patient's Benefit or Condition	ADMINISTRATIVE DISCHARGE: Other Criteria
CONNECTICUT GEN.STAT.(1965 Supp.) Title 17 [n.13]		§175a	§175a [n.15]	§175a if incompetent [n.26]		§175a	§175a physician and psychologist [n.27]					§175a	§175a					§175a				§175b		§175b for minor or adult incompetent [n.4]	§175b			§175b no more than seven days	§175b		§175a	
DELAWARE CODE(1964 Supp.) Title 16 [n.13]	§5521 [n.28]		§5521 (a) [n.15]	[n.28]			§5521(a) Mental Hygiene Clinic (recommendation) [n.29]											§5521 (a)														
FLORIDA STAT.(1960; 1965 Supp.) Ch.393		§031 (1), (2) if 21 or over [n.30]	§031 (1), (2) under 21 [n.15, 30]			§031 (1)						§031 (2)						§031 (2)													§031 (3)	§031(3) most effective use of center
		§021 (1), (2) [n.30]				§021 (1)	§021(2) physician					§03	§07	§07 women of child-bearing age and those most likely to profit by special education and training				§021 (1)					§05 [n.24]		§05			§05 discretionary release			§05 for child	§05 for child, benefit of center
GEORGIA CODE(1965 Supp.) Title 88 [n.13]					§2503 [n.1]	§2505				§2503			§2503	§2503/ children and women of child-bearing age				§§2502 (d), 2503						§2505 [n.4]	§2505			§2505 within fifteen days	§2505		§§2506, 2509	§2506 most effective use of institution
HAWAII REV.LAWS(1965 Supp.) Ch.82 [n.13]	§15 minor		§15 [n.15, 31]			§15						§15 [n.31]						§15					§15 [n.24]		§15			§15 no more than thirty days	§15	§15 discharge or commitment (twentieth birthday)		
IDAHO CODE(1965 Supp.) Title 66		§318 if 21 or over	§318 under 21 [n.15]			§322 (c) (optional) [n.32]	§§317(e); 322(a),(b) (optional) psychiatrist, clinical psychologist, neurologist, physician or surgeon [n.2]			§318					§§317(e), 324 psychiatrist, psychologist, neurologist, physician or surgeon [n.7]			§§317 (f), 318	§§317 (f), 318	§322 (c) (optional) nine weeks [n.32]		§320 (a)		§320 [n.4]	§320 (a) [n.9]	§320 (a)(1) [n.10]	§320 (a)(2) if patient under 16	§320(a) within seven days	§§320 (a)(3), 350 [n.11]		§319	
ILLINOIS STAT.(1965) Ch.91-1/2 [n.6, 33]		§5-1 (1) if of lawful age	§5-1 (3) [n.15]		§5-1 (2) with consent of patient	§5-1	[n.6]		[n.6]	§5-1 [n.6]					[n.6]		[n.6]	§§1-4 5-1 [n.6]	§§1-4 5-1 [n.6, 33]		§5-2	§5-2			§5-2			§5-2 within 15 days unless request withdrawn	§5-2		§5-4 [n.6]	

II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED [n. a] –

STATE AND STATUTE	Age Limitation	APPLICATION					CERTIFICATION			ADMISSION CRITERIA											Patient Informed of Right to Release	RELEASE ON REQUEST									ADMINISTRATIVE DISCHARGE	
		By Patient	By Parent, Guardian or Other Interested Party			Required to be Written	By	When Executed		Approval By			Available Accommodations	Preference to	Mental Examination			PLACE		Minimum Duration		Request			Required to be Written	Consent		Time for Release	Extension by Commitment	Majority Provisions	Patient's Benefit or Condition	Other Criteria
			For Minor	For Adult	For Any			After Examination	Before Application or Admission	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency			By	When Conducted		Public Institution	Private Institution			By Patient	By Parent, Guardian, or Other Interested Party			Of Patient When Request is by Another	Of Parent or Guardian for Minor					
																Before Admission	After Admission						For Minor	For Any								
INDIANA STAT (Burns, 1964) Title 22 [n.5,34]		§1205 (1) if of lawful age	§1205 (3) [n.15]		§1205 (2) with consent of patient [n.1]	§1204	§1207 physician			§§1204, 1207			§1207		§1207, Superintendent or physician appointed by him	§1207		§§1201 (5), 1206 [n.34]				§1205			§1205			§1205 ten days		§1206 commitment (twenty-first birthday)	§§1207, 1307	
IOWA CODE (1963 Supp) Ch.222 [n.13]					§13 [n.1, 35]	§13				§13			§§13, 14		§§5,13 hospital-school	§§5,13		§§1,6, 13						§15 [n.4]	§ 15			§15 ten days			§59	
KANSAS STAT. (1964) Ch.76 [n.13,36]	[n.36, 37]		§17c02 [n.15]	[n.37]	[n.1, 37]	§17c02 [n.37]	§17c02 psychiatrist or physician [n.38]				[n.39]	[n.39]	[n.39]		[n.40]	[n.40]		§§1610 17c02 [n.36]				§§1611, 1617		§§1611, 1617 [n.4]	§§1611, 1617			§§1611, 1617 ten days	§§1611, 1617 [n.12]	—	§§1611, 1617	
KENTUCKY REV.STAT.(1966 Supp.) Ch.203 [n.6]		§020 (1) if 21 or over	§020 (1) under 21 [n.15]		[n.6]	§020 (1) [n.32]	[n.6]		[n.6]		§020 (1)							§§020 (1), 190 [n.6]			[n.6]	§020 (3) [n.6]		§020(3) [n.4,6]	§020 (3) [n.6, 9]	§020 (3) [n.10]	§020 (3) if patient under 21	§020(3) within five days [n.6]	§020 (4) [n.6]	—	§020 (2)	§020(2) most effective use of hospital
LOUISIANA REV.STAT.(1950; 1963 Supp.) Title 28 [n.6,41]	§60 minor		§60 [n.15]		[n.6]	§60	§60 physician [n.6]	[n.6]	[n.6]	§§50 (1),60 [n.6]			50(1)					§§22-24,60 [n.6]	[n.6]			[n.42]		[n.42]	[n.42]	[n.42]		[n.42]	[n.42]		§§96, 97	
MAINE [n.6]					[n.6]		[n.6]						[n.6]					[n.6]			[n.6]			[n.6]	[n.6]			[n.6]	[n.6]		[n.6]	
MARYLAND CODE(1964;1965 Supp.) Art.59 [n.6]		§37 if competent [n.20]			[n.6]	§37	[n.6]	[n.6]	[n.6]	§37 [n.6]								§37 [n.6]	§37 ? [n.6]		§ 37	§37 [n.6]		[n.6] §42 [n.4]	[n.6]			§37 no more than three days [n.6] §42 any time	§37 [n.6, 12]		§§37, 42	
MASSACHUSETTS GEN.LAWS(1965) Ch.123 [n.6]					§47 [n.1]	§47	§§47,53 physician	§47 ten days	§47 sixty days	§47					[n.43]		[n.43]	§47													§89	§46 (peremptory)
MICHIGAN STAT.ANN.(1956; 1963 Supp.)	[n.45]	§809(1) if competent and over 21 or emancipated [n.20]	§809(1) if under 21 and unemancipated [n.15]			§809 (1)				§809 (1)		[n.45]		§845 indigent patients	[n.46]		[n.46]	§§801, 809 (1)				§809 (1) if over 21 and emancipated	§809(1) if under 21 and not emancipated [n.36]		§809 (1)			§809(1) not more than 5 days	§825 [n.12]		§§825, 825(1) [n.47]	

II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED [n. a]

STATE AND STATUTE	Age Limits	APPLICATION					CERTIFICATION			ADMISSION								PLACE		Minimum Duration	Patient Informed of Right to Release	RELEASE ON REQUEST								Majority Provisions	ADMINISTRATIVE DISCHARGE	
		By Patient	By Parent, Guardian or Other Interested Party			Required to be Written	By	When Executed		Approval By			Criteria					Public Institution	Private Institution			Request				Consent		Time for Release	Extension by Commitment		Patient's Benefit or Condition	Other Criteria
			For Minor	For Adult	For Any			After Examination	Before Application or Admission	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	Preference to	Mental Examination							By Patient	By Parent, Guardian, or Other Interested Party		Required to be Written	Of Patient When Request is by Another	Of Parent or Guardian for Minor					
															By	When Conducted							For Minor	For Any								
																Before Admission	After Admission															
MINNESOTA STAT.(1965 Supp.) Ch.575 [n.48]		§75	[n.49]									§75	[n.49]					§75				§75			§75			§75 three days	§75			
MISSISSIPPI CODE(1952)	§6769 minor		§6769 [n.15]							§6769						§6769		§6769													§6769	
[n.50]		§6909-12			§6909-12[n.1, 20]		§6909-12 two physicians			§6909-12				§6906 free patients	§6909-12 director and staff of hospital	§6909-12		§6909-12													§§6906, 6919	
MISSOURI [n.6,13]					[n.6]		[n.6]		[n.6]			[n.6]	[n.6]					[n.6]													[n.6]	
MONTANA REV.CODES(1965) Title 80 [n.13,51]					§2306 [n.1]	§2306	§2306 two physicians or physician and psychologist acceptable to dep't of institutions					§§2304, 2306	§2306					§§2304, 2306				§2309 (2)		§2309 (2) [n.4]	§2309 (2) [n.9]			§2309(2) within twenty days	§2309 (2)			§2309(1) (peremptory)
NEBRASKA REV.STAT.(1965 Supp.) Ch.83 [n.13,52]					§220 (1)(c) [n.1]													§220 (1)(c)													§550(1)	
NEVADA REV.STAT. Ch.433 (1957) [n.13,53]	§300 (1)(b) over 2 under 21		§300 (1)(b) [n.15]							§300 (1)(b)								§§010, 300(1) (b)														
Ch.435(1959)	§§020, 031(1) child		§030 (1) [n.15]			§050 (1)						§030 (2) county commissioners						§§010 (2), 030(4) [n.8]	§§010 (2), 030 (4) [n.8]													
NEW HAMPSHIRE (no provision) [n.13]																																
NEW JERSEY STAT.(1965 Supp.) Title 30,ch.4 [n.54]		§25.1 if over 18 and retard-ed[n. 55,56]	§25.1 [n.15, 56]	§25.1 if deficient [n.26 55,56]		§25.1	[n.56]					§§25.2-25.4, 25.6 [n.56]	§25.6		[n.56]	[n.56]		§§256, 165.2	§§256, 165.2; ch.11, §10			§107.3 (2) (if admitted on own application)	§§102, 107.3 (1) [n.24]	§§107.1, 107.3(1) for adult by guardian	§107 & 107.3 (1), (2)			§§107.1, 107.3 promptly [n.57]		§§107.2, 107.3(4), 165.5 Discharge or continued residence if requested by patient or guardian (twenty-first birthday)[n.58]	§§107; 107.3 (3),(5)	

II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED [n. a]

STATE AND STATUTE	Age Limits	APPLICATION					CERTIFICATION			ADMISSION								PLACE		Minimum Duration	Patient Informed of Right to Release	RELEASE ON REQUEST								Majority Provisions	ADMINISTRATIVE DISCHARGE	
		By Patient	By Parent, Guardian or Other Interested Party			Required to be Written	By	When Executed		Approval By			Criteria					Public Institution	Private Institution			Request				Consent		Time for Release	Extension by Commitment		Patient's Benefit or Condition	Other Criteria
			For Minor	For Adult	For Any			After Examination	Before Application or Admission	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	Preference to	Mental Examination							By Patient	By Parent, Guardian, or Other Interested Party		Required to be Written	Of Patient When Request is by Another	Of Parent or Guardian for Minor					
															By	When Conducted							For Minor	For Any								
																Before Admission	After Admission															
NEW MEXICO STAT.(1965 Supp.,1966 Supp.) Ch.34, art.3					§§10 (A),11 [n.1]	§11				§13	§§10 (A), 13		§10 (A)	§§5(E),6(D),13 cases of hardship or social menace	§§6.2(A),12,13 staff of institution,and hospital evaluation board [n.7]	§§12, 13		§§10 (A),11						§14 [n.4]				§14 upon application				
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.) [n.6,15]		§122 if 18 or over	§122 [n.15]		[n.6]	§122	[n.6]		[n.6]	§122 [n.6]		§§21, 122	§120 (state institution) [n.6]	§120 for state schools persons unable to pay for private facilities				§§120, 122 [n.6]	§122 [n.6]	§122 (optional) sixty days [n.6]	§88(d) if requested by patient or anyone	§122 [n.6]	§122 if under 18 [n.24]	[n.6]	§122 [n.6]			§122 fifteen days(optional;if after sixty days) [n.6]	§133(1) [n.6, 12]		§133 (1), (2)	
NORTH CAROLINA GEN.STAT.(1964; 1965 Supp.) Ch.122					§70 [n.1]							§§3,70						§§69, 70						§71.1 [n.4]				§71.1 when requested			§71.1	§71.1 best interest of center
NORTH DAKOTA CENTURY CODE (1965 Supp.) Title 25, ch.4					§06 [n.1]								§06				§06 temporary admission for observation	§§01, 06						§06 [n.4]	§06			§06 within six months	§06		§§06, 08	§06 effective use of state school
OHIO REV.CODE(1965 Supp.) Title 51, ch.5152 [n.6,59]		§311	§311 [n.15]	§311 if incompetent [n.26]	[n.6]	§311	§311 physician [n.6]	[n.6]	[n.6]	§311 [n.6]			§311		[n.6]		[n.6]	§311 [n.6]	[n.6]		§312 if requested by patient [n.6]	§312 [n.6]	§312 [n.24]	[n.6]	§312 [n.6]			§312 no more than four days [n.6]	§312 [n.6]		[n.6]	§311 (peremptory)
OKLAHOMA STAT.(1966 Supp.) Title 30 [n.60]	[n.61]				§310 (a) [n.1]	§310 (a)				§310 (a) [n.61, 62]		§310 (a) [n.61, 62]	[n.62]	[n.61]	§310(a) psychologist [n.62]	§310 (a)		§§301, 3[illegible]						[n.4, 63]	[n.63]			[n. 63]			§310 (b) [n.63]	[n.63]
OREGON REV.STAT.(1965) Ch.427	§220 minor [n.64]		§220 (1) [n.15]							§220			§§065 (1); 230(1), (2)	§§0[illegible](1) (optional) person's [illegible] or condition is a threat to their welfare or safety or safety of others	§225(1) facility or institution designated by Mental Health Division	§225 (1)		§§010, 220					§240(1) [n.24]		§240 (1)			§240(1) no more than 30 days	§240 (2), (3)	§250 discharge or commitment(age 21)	§120, 260 (1)	
PENNSYLVANIA [n.6]					[n.6]		[n.6]	[n.6]	[n.6]	[n.6]								[n.6]	[n.6]												[n.6]	

II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED

[n. a]

STATE AND STATUTE	Age Limits	APPLICATION					CERTIFICATION			ADMISSION								PLACE		Minimum Duration	Patient Informed of Right to Release	RELEASE ON REQUEST								Majority Provisions	ADMINISTRATIVE DISCHARGE	
		By Patient	By Parent, Guardian or Other Interested Party			Required to be Written	By	When Executed		Approval By			Criteria					Public Institution	Private Institution			Request			Required to be Written	Consent		Time for Release	Extension by Commitment		Patient Benefit or Condition	Other Criteria
															Mental Examination							By Patient	By Parent, Guardian, or Other Interested Party									
																When Conducted																
			For Minor	For Adult	For Any			After Examination	Before Application or Admission	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	Preference to	By	Before Admission	After Admission						For Minor	For Any		Of Patient When Request is by Another	Of Parent or Guardian for Minor					
RHODE ISLAND GEN. LAWS (1956) Title 26, ch.5 [n.13]					§9 [n.1]	§9	§9 two physicians			[n.65]		§9 [n.65]			[n.65]			§§1,6, 9													[n.66]	§17 necessary or expedient
SOUTH CAROLINA CODE OF LAWS (1962; 1965 Supp.) Title 32					§§981, 1081, 1095.6 [n.1]					§981		§981	981 (state school)					§§911 (15), 981	§981												§§990, 1031, 1091 (state facilities)	
											§1061		1081	§1062 white persons				§§1062, 1081														
											§1085.4		§1095.6					§§1094, 1095.6														
SOUTH DAKOTA CODE (1960 Supp.) Title 30 [n.13]					§0409 [n.1]	§0409	§0409 psychologist and physician			§0605-1		§§0405, 0409	§0605-1					§§0602, 0605-1													§0405	
TENNESSEE CODE (1966 Supp.) Title 33 [n.6]		§501 (1) if 18 or over	§501 (1) [n.15]	§501 (1) [n.26]	[n.6]	§501	[n.6]	[n.6]	[n.6]	§501			§501					§§302 (b) 501	§§302 (b) 501		§308 (h) information and assistance										§310	
TEXAS REV. CIVIL. STAT. (Vernons, 1966 Supp.) Art. 3871b [n.13]					§9 [n.1]	§9						§9; tit. 92, art. 5547-202, §2.01	§10		§§4,9,13(2) diagnostic center maintained or approved by Dep't of Mental Health & Mental Retardation	§§4,9, 13(2)		§12; tit. 92, art. 5547-202, §2.19													§16	
UTAH CODE (1961) Title 64, ch.8					§15 [n.1]	§14	§§14,15 physician	§§14, 15 five days		§15		§§2, 15						§1,15														§15 (peremptory)
VERMONT (no provision) [n.67]																																
VIRGINIA CODE (1953; 1966 Supp.) Title 37 [n.6]		§113 if competent [n.20]	§113 if under 21 and not emancipated [n.15]		§§113, 216 [n.1,6]	§§113, 121	[n.6]			§§113, 216 [n.6]			§§113, 216 [n.68]	§192 indigent children most likely to benefit from care and training [n.68]				§§1.1 (12), 113, 216	§113			§114		§114 [n.4]	§114	§114		§114 not more than ten days			§§94, 216	§216 [n.68]

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II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED [n. a]

STATE AND STATUTE	Age Limits	APPLICATION					CERTIFICATION			ADMISSION								PLACE		Minimum Duration	Patient Informed of Right to Release	RELEASE ON REQUEST								Majority Provisions	ADMINISTRATIVE DISCHARGE	
		By Patient	By Parent, Guardian or Other Interested Party			Required to be Written	By	When Executed		Approval By				Criteria				Public Institution	Private Institution			Request				Consent		Time for Release	Extension by Commitment		Patient's Benefit or Condition	Other Criteria
			For Minor	For Adult	For Any			After Examination	Before Application or Admission	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	Preference to	Mental Examination							By Patient	By Parent, Guardian, or Other Interested Party		Required to be Written	Of Patient When Request is by Another	Of Parent or Guardian for Minor					
															By	When Conducted							For Minor	For Any								
																Before Admission	After Admission															
WASHINGTON REV.CODE(1962) Title 72,ch.33			§120 (1) [n.15]	§120 (2) [n.26]		§120	§120 at least two physicians or clinical psychologists or one of each [n.69]			§120 [n.70]		[n.70]	§§070, 120					§§020 (6), 030, 120						§140 [n.4]				§140 no more than thirty days	§150		§170	
WEST VIRGINIA CODE(1965 Supp.) [n.6]		§2656 (1) if over 21	§2656 (2) under 21 [n.15]		[n.6]		[n.6]	[n.6]	[n.6]	§2656 [n.6]			§2656		[n.6]		[n.6]	§§[illegible] 2648, 2656				§2657 (1)		§2657 (1) [n.4]	§2657 (1) [n.9]	§2657 (1)(1) [n.10]	§2657 (1)(2) if patient under 21	§2657(1) forthwith	§2657 (1)(3) [n.11]		§2657	
WISCONSIN STAT. (1965) ,ch.51 [n.6,71]		§10(1) if adult [n.71]	§10(1) [n.15]		[n.6]	§10 (1)	§10(1) patient's physician [n.6]			§10(1)				[n.72]	[n.73]	[n.73]		§§001 (3), 10(1), 22(1)	[n.71]			§10(2)		§10(2) [n.4]	§10(2)			§10(2) not over 35 days after 5 days' notice	§10(2)		§22(5)	
WYOMING STAT.(1957) Title 9	§443 child under sixteen		§443 [n.15]			§443 [n.32]	§§443,447 physician or psychologist[n.2]	§§443, 447 thirty days				§§427, 443						§§427, 428, 443		§443 six months [n.32]			§443 [n.24]		§443			§443 if after six months,not longer than twenty days		§443 removal or commitment(age eighteen)		§443 (peremptory)
DISTRICT OF COLUMBIA (no provision)																																

Chart II. VOLUNTARY ADMISSION OF THE MENTALLY RETARDED

FOOTNOTES

a. An admission procedure is "voluntary" for purposes of Chart II if it falls within either of the following classifications:

(1) A prospective patient may apply for his own admission (if the procedure also provides for application by an "interested party," this provision is also noted; if the procedure also provides for application by "any person" or an "official," this provision is not noted, but the procedure is charted again in Chart III);

(2) A person legally empowered to act for the prospective patient may apply for his admission (e.g., a parent for his minor child, or a guardian for his ward), but "any person" or an "official" may not apply (if the procedure also provides for application by some other "interested party," this provision is also noted; if the procedure also authorizes application by "any person" or an "official," the procedure is charted only in Chart III).

1. Application for admission of any prospective patient, minor or adult, may be made by his parent or guardian -- A.A.M.D. Draft Act, Arkansas, Georgia, Iowa, Kansas, Massachusetts, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia; or by a person or agency having his custody -- A.A.M.D. Draft Act, New Mexico, Rhode Island, South Carolina; or by an adult next of kin -- Georgia; or by another person responsible for him -- Iowa; or by a person in loco parentis -- North Carolina; or by the manager of an institution in which the patient is kept -- Oklahoma; or by his county governing body -- South Carolina; or by his spouse -- Texas.

   Application may be made: by the prospective patient's relative or attorney, with his consent -- Illinois, Indiana; by an relative or citizen -- Mississippi.

2. Certification is made: "by a team of persons with special training and experience in the diagnosis and management of the mentally retarded, which team shall include members professionally qualified in the fields of medicine, clinical psychology, and social work, together with such other specialists as the individual case may require" -- A.A.M.D. Draft Act; by a "designated examiner" who is "any licensed physician or person designated by the state board of health as specially qualified by training or experience in the diagnosis of mental or related illness...." -- Idaho; by a physician who "should be a specialist in mental cases if possible," or by a psychologist who "shall be the state director of special education, the superintendent of the training school, or other person designated by either of these two as competent" -- Wyoming.

3. In addition to the charted provision for "discharge" upon request, there is also a provision for "release" (without "discharge") upon the written request of the patient's parent or guardian. The request must be granted "not more than 48 hours" after its receipt, or else institutionalization must not be extended by petition for judicial commitment -- A.A.M.D. Draft Act, art. 8, § f.

4. Request for release of any patient, including a minor, may be made by his parent or guardian -- A.A.M.D. Draft Act, Alaska, Arkansas, Colorado, Connecticut, Georgia, Idaho, Iowa, Kansas, Kentucky, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Washington, West Virginia; or by his spouse or adult relative or next of kin -- Alaska, Colorado, Idaho, Kentucky, West Virginia; or by an interested responsible adult or a peace officer -- Alaska; or by his conservator or a person having his custody -- Connecticut; or by his adult next of kin who signed the admission application -- Georgia; or by another person responsible for his admission -- Iowa; or by a person having his custody -- New Mexico.
   Request may be made: by relatives or friends maintaining the patient -- Maryland; by another -- Virginia; by the patient's guardian -- Wisconsin.

5. The charted procedure for the mentally ill is also applicable to the mentally retarded because mental retardation is specifically included in the definition of "mental illness" -- Alaska, § 340(10); Indiana, §§ 1201(1),(2); 1306(1).

6. See the procedure tabulated in Chart III, which is "voluntary" insofar as it authorizes admission upon the application of a parent, guardian, or other person legally empowered to act for the prospective patient -- Alaska, Illinois, Kentucky, Louisiana, Maine, Maryland, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin.

7. Examination is conducted: by a "designated examiner" who is a licensed physician or person designated by the state health agency as specially qualified in the diagnosis of mental or related illness -- Alaska, Idaho; by an "evaluation board...composed as follows: One (1) member who is a duly licensed physician of this state; one (1) member who is a qualified psychologist; and one (1) or more other members to be selected by the board of directors" -- New Mexico.

8. The institution may be: "located in the state or in another state" -- Alaska; "in or without the State" -- Nevada.

9. A patient's request for release need not be written, but an interested party must request "in writing" -- Alaska, Idaho, Kentucky, Montana, West Virginia.

10. A patient's consent to another person's request for his release may be required if the patient was admitted on his own application -- Alaska, Colorado, Idaho, Kentucky, West Virginia.

11. Commitment proceedings may not be commenced unless release of the patient is first requested -- Alaska, § 070(k); Idaho, § 320(b); West Virginia, § 3657(1).

12. In addition to the charted provision for a commitment petition to be filed by the superintendent or head of the institution, judicial proceedings may also be initiated on the petition of the patient, an interested party, or a peace officer -- Alaska, § 060.

    There is no provision for a commitment petition to be filed by the superintendent or head of the institution, but upon his refusal to discharge a patient on request, judicial proceedings may be initiated by the person requesting the discharge -- Kansas, Michigan, New York.

    The patient must be discharged on request unless he has been committed by certification "on the request of his or her relatives or friends" -- Maryland.

13. In addition to the charted procedure, it may also be possible for mentally retarded patients to be hospitalized under a voluntary procedure for the mentally ill because the terminology is broad enough to include mental retardation -- Arizona, tit. 36, §§ 501-504 (1965 Supp.); California, § 6060; Connecticut, §§ 187, 187a; Delaware, §§ 5121, 5123 (1953); Georgia, §§ 501-504; Hawaii, ch. 81, § 32 (1955); Iowa, ch. 225, §§ 1, 7-9; ch. 229, §§ 40, 41 (1949; 1965 Supp.); Kansas, ch. 59, §§ 2904-2907 (1965 Supp.); Missouri, REV. STAT. ch. 202, §§ 780(5), 783-790 (1962)(no charted procedure); Montana, tit. 38, § 406 (1961); Nebraska, § 324 (1958); Nevada, ch. 433, §§ 330-350 (1957); New Hampshire, REV. STAT. ch. 135, §22 (1964) (no charted procedure); New York, § 71; Rhode Island, tit. 26, ch. 2, § 18; South Dakota, § 0115 (Sess. Laws 1961, ch. 153); Texas, art. 5547, §§ 4(k), 22-26 (1958; 1966 Supp.).

14. The charted procedure applies only to the admission of a non-"indigent" child, i.e., a minor whose estate, parent, relative or guardian is able to bear the full cost of maintaining him at the Children's Colony -- Arizona.

15. Application for admission of a minor may be made by his parent or guardian -- Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Mississippi, Nevada, New Jersey, New York, Ohio, Tennessee, Washington, West Virginia, Wisconsin; or by a person or agency having or entitled to his custody -- California, Connecticut, Delaware, Hawaii, New Jersey, Ohio, Tennessee, Washington; or by a person in loco parentis -- Illinois, Indiana; or by his relative or nearest friend -- Nevada (educable child); or by his next of kin -- New York.

    Application may be made by the minor's parent -- Louisiana, Oregon, Virginia, Wyoming; or by a custodian or person supporting the minor -- Louisiana; or by a person having or entitled to his custody -- Oregon, Wyoming.

16. The statutes refer to "mentally defective children," but § 301 provides that "child or children means mentally deficient persons without regard to chronological age" -- Arkansas.

17. The Children's Colony Board not only determines the availability of facilities and the eligibility of the patient, but also selects either voluntary admission or judicial commitment as the appropriate institutionalization procedure -- Arkansas.

18. The examiners must "use standard mental and psychological tests and physical examinations" -- Arkansas, § 303(a)(3).

19. The charted procedure of § 6050 is for voluntary admission to "state hospitals for the mentally ill or mentally deficient." Section 6602, which is practically identical, provides for voluntary admission to "any state hospital." However, prior to the enactment of §6050, it was the opinion of the Attorney General that neither §6602 nor any other provision permitted voluntary admission to the state hospitals for the "mentally deficient" (35 OPS. ATT'Y GEN. 31). Accordingly, only the provisions of § 6050 are tabulated in the chart.

    Sections 6071, 6072, 6302(c) provide a similar procedure for voluntary admission to County Psychopathic Hospitals established under § 6300 for the care of "persons who are mentally ill, mentally disordered, mentally deficient or retarded..."

    For voluntary admission of mentally retarded patients to State Neuropsychiatric Institutes, see §§ 6051, 7304, 7406.

    Section 7000.1 authorizes the State Department of Rehabilitation to establish "residential rehabilitation centers for the mentally retarded." Although no admission procedures are specified, the section "does not authorize the care, treatment, or supervision or any control over any mentally retarded person without the written consent of his parent or guardian" -- California.

20. The mental condition of a prospective patient who applies for his own admission must be such "as to render him competent to make" the application -- California, Michigan, Virginia; or to "understand it if made by another for him" -- Virginia.

    No person may be "received or detained as a voluntary patient whose mental condition...is such, or becomes such, that such person cannot comprehend the act of voluntary commitment, or be able to request his or her discharge, or give continuous assent to detention" -- Maryland.

21. But see DEP'T OF MENTAL HYGIENE: POLICY AND OPERATIONS MANUAL § 3461 (1966): "...Adult retarded may legally be admitted on a voluntary basis, but, due to requirements that they be competent to make such application, all adult-retarded shall be referred for court commitment" -- California.

22. Cf. DEP'T OF MENTAL HYGIENE: POLICY AND OPERATIONS MANUAL § 3412 (1966): "Each patient shall be examined by a physician within 24 hours of admission and the finding recorded in the clinical file" -- California.

23. See also DEP'T OF MENTAL HYGIENE: POLICY AND OPERATIONS MANUAL § 3411 (1966): "All persons admitted to a Department facility shall be informed, as far as possible, at the time of admission, of the nature of the hospital and of the reasons for admission" -- California.

24. Request for release of a minor may be made by his parent or guardian -- California, Florida, Hawaii, Michigan, New Jersey, New York, Ohio, or by a person entitled to his custody -- California, Ohio; or by his adult relative -- Hawaii; or by the Probate Court -- Michigan; or by his next-of-kin who made original application -- New York.

Request for a minor's release may be made: by the person entitled to his custody -- Oregon; by the original applicant or his legal representative -- Wyoming.

25. But see note 21 supra; DEP'T OF MENTAL HYGIENE: POLICY AND OPERATIONS MANUAL § 3461 (1966): "Minors admitted on a voluntary basis may not be held beyond the age of 21 years. If continued hospitalization is necessary, commitment procedure should be initiated and completed prior to attaining the age of 21 years" -- California.

26. Application for admission of an adult patient must be made: by his conservator or a person having his custody -- Connecticut; by his guardian -- New Jersey, Tennessee; by his guardian or a person having his custody -- Ohio; by his parent, guardian, or an agency entitled to his custody, unless "the superintendent deems the application should be made solely by a guardian" -- Washington.

27. Psychological certification is required only if the prospective patient "has the physical and mental capacity for such evaluation" -- Connecticut.

28. In addition to the charted procedure of § 5521(a) for the voluntary admission of minors, § 5521(b) provides that "the Board of Trustees of the Department of Mental Health may establish a voluntary admission procedure for the observation, study, diagnosis or treatment of any person who is or may be mentally retarded" -- Delaware.

29. But see Letter From Peter A. Peffer, M.D., Superintendent, Hospital for the Mentally Retarded, to The George Washington Univ. Institute of Law, Psychiatry and Criminology, Oct. 8, 1965: "...cases were referred to the institution for the retarded through the Mental Hygiene Clinics. This has already been eliminated. The cases are now referred directly to the institution" -- Delaware.

30. Application is made to the County Judge, who forwards it to the Director of the Division of Mental Retardation -- Florida.

31. "No such voluntary admission shall be permitted for any minor with respect to whom an application for commitment has previously been denied after presentation to a circuit judge having jurisdiction, without the specific written authorization of such judge... Any court-appointed guardian of the person of a minor, before entering into any agreement with the director [of Health] concerning the voluntary admission of such minor, shall report such plan to the court that appointed such guardian and shall thereafter be guided by the directions of such court" -- Hawaii.

32. "...it may be required by the head of the hospital...that an agreement be signed by the person seeking hospitalization, witnessed by two competent witnesses,...that he will stay therein and submit himself to observation, examination and treatment for at least nine (9) weeks, unless sooner discharged..." -- Idaho.

"The application shall be signed by the applicant in the presence of two witnesses" -- Kentucky.

The application must be accompanied by "a certified agreement on the part of the applicant that, if so admitted, the proposed patient will not be removed from the training school within a period of six months from the date of admission" -- Wyoming.

33. In addition to the charted procedure which is specifically applicable to the mentally retarded, the "informal admission" procedure of § 4-1 for the mentally ill is seemingly made applicable to the mentally retarded by § 3-1. Under this procedure, a patient may be admitted to a state hospital "without making formal application therefor (although standard hospital information may be elicited) if, after examination, the superintendent of such hospital deems such person suitable.... The superintendent shall cause every patient admitted pursuant to the provisions of this Section to be informed at the time of admission of his status as an informally admitted patient and of his right to be released from the hospital at any time during the normal day-shift hours of operation... This section shall not apply to a person who is a patient of a physician, and who requests admission and is admitted to a licensed private hospital, or psychiatric unit of a general hospital, for care and treatment without confinement or detention, under the direction and supervision of such physician" -- Illinois.

34. In addition to the charted procedure for admission of "mentally ill" (including "mentally deficient") persons to "any psychiatric hospital," there are several special provisions for voluntary admission to: the Fort Wayne State Hospital and Training Center, § 1726 (made also applicable to the Northern Indiana Children's Hospital by § 1752, and to the Muscatatuck State Hospital and Training Center by §§ 1908, 1909); the Carter Memorial Hospital, § 1232(a); the psychopathic wards of City Hospitals, § 1233; and a U.S. institution, § 1242 -- Indiana.

35. Application to the institution is made by the County Board of Supervisors upon the request of an interested party -- Iowa.

36. Section 1410 provides that "the state board [of Social Welfare] shall make and establish rules and regulations providing for the admission of persons to the said Parsons state hospital and training center and to the said Winfield state hospital and training center." Section 17c02 provides similarly for the admission of "mentally retarded children" to the Kansas Neurological Institute. Accordingly, both the State Board of Social Welfare and the Division of Institutional Management of the State Department of Social Welfare have promulgated regulations for the admission of mentally retarded persons to the two Hospitals and Training Centers and to the Neurological Institute.

In addition to these regulations, § 17c02 contains provisions applicable to admission to the Neurological Institute, and §§ 1411, 1617 govern discharge from the State Hospitals and Training Centers. These statutory provisions are tabulated in subsequent columns of the chart, and regulatory provisions are footnoted -- Kansas.

37. REG. OF STATE BOARD OF SOCIAL WELFARE § 30-23-47 (1959): "Application for admission to an institution for the mentally retarded shall be signed by both parents if living together, by the parent having custody if the parents are not living together, or by a court appointed guardian if such is the case. Parents shall be deemed to be natural guardians of their child twenty-one (21) years of age and older if the child was mentally incapacitated prior to his becoming twenty-one (21) years of age" -- Kansas.

38. Cf. REG. OF STATE BOARD OF SOCIAL WELFARE § 30-23-48 (1959): "Application ...shall contain a statement from a physician, based upon examination of the applicant, recommending admission to an institution for the mentally retarded, for evaluation, treatment and/or training" -- Kansas.

39. REG. OF STATE BOARD OF SOCIAL WELFARE § 30-23-49 (1959): "Determination as to whether the application for admission will be forwarded to Parsons State Hospital and Training Center, Winfield State Hospital and Training Center, or Kansas Neurological Institute shall be made by the State Director of Institutions, in cooperation with staff of the respective institutions, and based upon the evaluation, treatment and training needs of the applicant as well as available facilities within the institutions..." See also ADMIN. REG. OF DIV'N OF INSTITUTIONAL MANAGEMENT § 120-2 (1959) -- Kansas.

40. See ADMIN. REG. OF DIV'N OF INSTITUTIONAL MANAGEMENT § 120-2.2 (1959): "Any child for whom an application for admission to an institution for the retarded has been received" may be referred by the Division of Institutional Management for evaluation at the child study unit of the Kansas Neurological Institute -- Kansas.

41. It is not entirely clear that the charted procedure actually applies to the voluntary admission of mentally retarded minors. Although the provisions are appropriate for such a procedure, they appear in a section which is entitled "Commitment of mentally defective or epileptic minors," and which does indeed contain unrelated provisions for judicial commitment by the juvenile court. On the other hand, the term "commitment" is used generically in Louisiana as similar to "hospitalization" or "institutionalization" (see Slovenko and Super, Commitment Procedure in Louisiana, 75 TULANE L. REV. 705, 706 (1961).

"Mentally defective" persons seem to be excluded from the "Voluntary admission" procedure of § 51, which applies to "any mentally ill, inebriate, or epileptic person." However, § 50 provides that "the superintendent of a state mental institution...shall receive for observation, diagnosis, care, and treatment any individual whose admission is applied for under any of the following procedures: (1) Voluntary admission...," and § 2(8) states that "mental institution" includes both "mental hospitals" and "schools" for mental defectives.

See also § 22.2, providing that for the Leesville State School, the State Department of Hospitals "is authorized to adopt rules, governing admissions, which rules shall be exclusive in relation to admission"; and tit. 40, § 2013.52, providing similarly for the Belle Chasse State School -- Louisiana.

42. Section 98.1 provides for release upon request for a "voluntary patient" of a "mental institution," but this provision seems to apply to patients admitted under § 51, not § 60. See note 41 supra -- Louisiana.

43. REG. OF DEP'T OF MENTAL HEALTH No. 2, Item 3 (1955): "Promptly after admission, each newly admitted patient shall receive a physical examination and mental examination" -- Massachusetts.

44. In addition to the charted procedure, § 997(4) provides a special, similar procedure for voluntary admission to the Lafayette Clinic. Section 849 provides for the admission of "feeble-minded" persons to the Wayne County institution under the same procedures as are applicable to state institutions -- Michigan.

45. "...no feeble-minded woman above the age of forty-eight (48) years, nor any feeble-minded man whose condition is due to senility shall be admitted to the Michigan home and training school unless such admission is approved by the state hospital commission" -- Michigan, § 845.

46. Cf. RULES & REGS. OF DEP'T OF MENTAL HEALTH § 3.04 (1964): "Every patient shall be carefully examined by a member of the hospital medical staff immediately upon admission and a full record of such examination shall be made with careful note of bruises, scars, marks and possible fractures and other injuries" -- Michigan.

47. See also RULES & REGS. OF DEP'T OF MENTAL HEALTH § 3.05(B) (1964): "A voluntary patient leaving the hospital without permission shall be discharged... However,...a minor voluntary patient who has been admitted upon the signed authorization of his parents or guardian, and who left the hospital without permission, shall be placed on convalescent status until the hospital superintendent has secured from the responsible relative or guardian a written notice indicating a desire to withdraw the patient from the hospital...." -- Michigan.

48. The charted procedure is for admission "in such manner and upon such conditions as the commissioner of public welfare may determine" (§ 75). *But see* MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY Ch. VI, § IV.D.4, at 49 (1959): "There is a law (Minn. St. 1957, Sec. 525.75) providing for voluntary entrace, but this has been infrequently used for either the epileptic or the mentally deficient. The Commissioner has first responsibility to his wards, and until there is space not needed by those under guardianship, voluntary entrance would mean an injustice to those for whom the Commissioner has definite responsibility...." See also MINN. STAT. ch. 252, § 03 (1965 Supp.). For guardianship of and commitment to the Commissioner, see Charts IV-A, B,C,D -- Minnesota.

49. *Cf.* OP. ATT'Y GEN. 248-B-3 (Nov. 17, 1950), determining that with the consent of his parents, a minor may be admitted to a state mental hospital as a voluntary patient -- Minnesota.

50. The second charted procedure of tit. 25, § 6909-12 is also tabulated in Chart III because of its provision for application by "any citizen" in addition to application by a prospective patient or "any relative" -- Mississippi.

51. In addition to the charted procedure, see § 2307: "In order to utilize facilities more efficiently during the temporary or seasonal decreases in population, and in order to extend the benefits of training and treatment programs offered by the state training school and hospital to mentally retarded persons whose extended commitment is not sought, the department of institutions may admit a mentally retarded person to the school for a period not exceeding sixty (60) days on the application of the person's parent or guardian" -- Montana.

52. The charted provision merely authorizes the Beatrice State Home to receive "such feeble-minded persons as may be...committed to the institution by petition of the parent or guardian, subject to the regulations for admission to such institution." In addition, ch. 43, § 618, provides that admission to state residential schools for mentally retarded children "shall be by regulations to be adopted and administered by the State Department of Education" -- Nebraska.

53. The first charted procedure of ch. 433, § 300(1)(b) is applicable to "mentally deficient, noneducable children"; the second charted procedure of ch. 435, §§ 010-030, applies to a child who "by reason of deficient mental understanding...is disqualified from being taught by the ordinary process of instruction or education," and whose parents, relatives, guardian or nearest friend "is unable to pay for the child's support, education and instruction in an institution or by a responsible person" -- Nevada.

54. In addition to the charted procedure, § 177.27(b) provides a special procedure for admission to the Research and Training Center "upon the approval by the commissioner [of Institutions and Agencies] of an application of the next of kin by blood or marriage or the parent, guardian or person standing in loco parentis of any mentally-deficient person whose admission is sought. Such application shall be upon forms prescribed by the commissioner and accompanied by proper certifications of 2 physicians that the person is mentally deficient...."

For similar procedures for admission to the Brisbane Child Treatment Center of "children who are seriously maladjusted or have nervous or mental disorders requiring observation, care and treatment," and to the N.J. Neuropsychiatric Institute of "individuals suffering from diseases and disfunctions of the brain and nervous system," see § 177.3 and § 177.15, respectively -- New Jersey.

55. For the statutory differentiation of "mentally retarded" and "mentally deficient" persons, see Chart I-A -- New Jersey.

56. Section 25.1 provides for "application for admission of an eligible mentally retarded person to functional services of the department [of Institutions and Agencies]." Prior to this application, the prospective patient must have been determined to be eligible under the procedures of §§ 25.2 - 25.4.

Section 25.2: "Application for determination of eligibility for functional services for a person under the age of 21 years who is believed to be mentally retarded may be made to the commissioner [of Institutions and Agencies] by: (1) his parent or guardian; (2) a child-caring agency, hospital, clinic, or other appropriate agency, public or private, or by a physician having care of the minor, provided the written consent of the parent or guardian has been obtained; or (3) a juvenile court having jurisdiction over the minor. Application for determination of eligibility for any person over 18 years of age for functional services may be made by: (a) a mentally retarded individual over 18 years of age on his own behalf; (b) the guardian of the person of an adjudicated mentally incompetent adult; or (c) any court of competent jurisdiction in which the issue of mental deficiency may have arisen and which finds that it is in the interest of the alleged mentally deficient person to determine such eligibility."

The determination of eligibility "shall be made under rules promulgated by the commissioner" (§ 25.3; for "evaluation services" provided by the Department, see § 165.1), and the findings are reported to the applicant (§ 25.4). If the prospective patient is determined to be eligible, "the commissioner or his designated agent shall issue to the applicant a statement of eligibility for the functional services of the department. The statement of eligibility shall advise the applicant of the particular functional service deemed most appropriate for the training, habilitation, care and protection of the mentally retarded individual as of the time of determination and shall further advise the applicant concerning the immediate availability of such services, or alternate services" (§ 25.4) -- New Jersey.

57. "...as promptly as possible, provided, however, that 48 hours' notice may be required" (§ 107.1). "...as promptly as practicable, under rules promulgated by the State Board of Control" (§ 107.3). See DEP'T OF INSTITUTIONS AND AGENCIES, ADMINISTRATIVE ORDER 1:26: STATE BOARD OF CONTROL POLICY FOR THE RELEASE OF RESIDENTS FROM STATE COLONIES AND SCHOOLS FOR THE RETARDED § 3 (Oct. 31, 1960): "The request of the parents of a minor or legal guardian of the person or [sic] an adult for placement of the resident shall be denied only if such placement would constitute a danger to the resident or the community." See also id. § 6.a. -- New Jersey.

58. Section 107.3(4) requires that a patient admitted as a minor must be discharged "upon attainment of the age of 21 years in the absence of a valid request for continuation of functional services." Section 107.2 provides that "an individual admitted as a minor...may continue to receive uninterrupted functional services on and after becoming 21 years of age if: (1) he has been adjudicated mentally deficient and the guardian of his person has filed a written request for continuation of functional service; or (2) he has not been adjudicated mentally deficient and on his own behalf files a request for continuation of functional services" (see note 55 supra).

Cf. § 165.5: "Whenever a mentally retarded minor has been admitted to functional services provided by the department on application of the parent or guardian..., the commissioner shall, not less than 6 months nor more than 3 years prior to the twenty-first birthday of said mentally retarded person, cause him to be examined to ascertain whether it appears that such person is mentally deficient" (see note 55 supra). If the patient is ascertained to be "mentally deficient," the Commissioner "shall inquire as to the intentions of the parent or guardian of said minor with respect to instituting proceedings for appointment of a guardian. In the event that no guardian has been appointed when the minor has attained age 21, ... then the Division of Mental Retardation within the department shall perform such services for the mentally deficient adult, as he may require, and which otherwise would be rendered by a guardian of his person" (§ 165.5; see also § 165.4) -- New Jersey.

59. In addition to the charted procedure, § 25 makes the procedures of ch. 5122 with respect to mentally ill patients also applicable to mentally retarded patients. The relevant provisions for voluntary admission are found in ch. 5122, §§ 02, 03 -- Ohio.

60. In addition to the charted provisions of title 56, the statutes still contain earlier provisions of title 43A relating to mentally retarded persons. See, e.g., tit. 43A, § 57 (1966 Supp.), providing voluntary admission procedures substantially similar to those of tit. 56, § 310. Such provisions of title 43A are not charted -- Oklahoma.

61. "Mentally retarded persons...with a mental age not above that of the average nine-year-old child, as determined by psychological examination, may be admitted...upon written application to the Director [of Public Welfare]....Provided, that other mentally retarded persons...who are above such mental age may be admitted upon recommendation of the superintendent of the institution and approval of the Director" -- Oklahoma, § 310(a).

62. DEP'T OF PUBLIC WELFARE: POLICIES & PROCEDURES; STATE SCHOOLS FOR THE MENTALLY RETARDED at 4 (Oct. 1, 1964): "....The application, when completed by the parent or guardian, must be filed in the office of the Director [of Public Welfare]. The Coordinator of Social Services for Mentally Retarded, after causing the application to be registered, adds such pertinent information as is available regarding the applicant and forwards the same to the Superintendent of the state school in the district of the applicant's residence. The Superintendent of the state school, as expeditiously as practicable, will make an evaluation. The date of the evaluation shall be the official date for determining the priority of admission to the state school.

"The Superintendent will study the reports of examination and recommendations from the members of the evaluation team. Following this study, he will place the applicant's name on the waiting list or make such other recommendations as, in his judgment, seem to be in the best interest of meeting the applicant's needs.....

"At such time as a suitable vacancy exists for the applicant, such information is given to the Director for approval or denial of admission to the state school" -- Oklahoma.

63. DEP'T OF PUBLIC WELFARE: POLICIES & PROCEDURES; STATE SCHOOLS FOR THE MENTALLY RETARDED at 5,6 (Oct. 1, 1964): "A mentally retarded person who has been admitted to any State School for the Mentally Retarded shall be subject to discharge, upon recommendation of the Superintendent and the approval of the Director, with all reasonable dispatch under any one of the condition set forth below.

"....(1) The Superintendent finds that a pupil's needs can adequately be provided by discharge to parents, guardian, or other relatives, nursing home or boarding home care, foster home care, or other suitable placement; (2) Parent or guardian makes written request for discharge; (3) The pupil is transferred from Oklahoma to another state...: (4) The pupil is admitted or transferred to a hospital, school or other facility...; (5) The pupil has been absent without authorized leave for a period of thirty days; (6) At the expiration of six months on trial visit, the pupil will be either discharged or returned to the State School....The discharge will be determined to be in the best interest of the state school or pupil" -- Oklahoma.

64. FAIRVIEW HOSPITAL AND TRAINING CENTER: STANDARD POLICY INSTRUCTION No. 126 (Admission Policy) § 3.1 (Feb. 15, 1966): "Children under 5 years of age should not be admitted except under unusual circumstances" -- Oregon.

65. DEP'T OF SOCIAL WELFARE: POLICY, PROCEDURE & FUNCTIONAL ORGANIZATION CHART RE LADD SCHOOL § II.C.1, at 5 (July 20, 1965): "The Diagnostic and Evaluation Board [consisting of the Superintendent, Senior Clinical Psychologist, Chief of Social Services, Supervisor of Instruction and Recreation, and Chief Medical Consultant of the Ladd School] shall review periodically each application for admission, provide a comprehensive evaluation of the case, and prepare and promptly submit written recommendations to the Department of Social Welfare Assistant Director for Curative Services regarding the advisability of accepting or rejecting such admissions..." -- Rhode Island.

66. DEP'T OF SOCIAL WELFARE: POLICY, PROCEDURE & FUNCTIONAL ORGANIZATION CHART RE LADD SCHOOL § II.B.1, at 4 (July 20, 1965): "Through the maximum utilization of appropriate community resources, the Dr. Joseph H. Ladd School shall release promptly to the community, any person domiciled within the institution for whom it has been determined, after a comprehensive evaluation, that institutionalization is no longer required" -- Rhode Island.

67. But see VT. STAT. ANN. tit. 18, §§ 2745, 2751(4), providing for admission to the Brandon Training School of "children who may be received upon the payment of such sums and upon such terms as the board of mental health shall determine," in addition to "children committed by the probate court" -- Vermont.

68. A voluntary patient may be admitted to any state or private institution, "provided such admission does not deprive any person who has been committed of care and treatment" (§ 113). A voluntary patient in a state institution "shall be detained so long as the superintendent and State Hospital Board deem advisable, provided that no indigent patient who has been committed is thereby, on account of lack of room, denied admission" (§ 216). For the state's Petersburg Training School, "those indigent colored children who would be most likely to receive benefit from care and training, shall, so far as practicable, be received and admitted" (§ 192) -- Virginia.

69. "In the case of a minor person....In the event the minor is entitled to school services, the application shall be accompanied by a report from the county school superintendent and/or the superintendent of the school district in which such minor resides setting forth the educational services rendered or in need of being rendered to the minor" -- Washington, §120(1).

70. "Any parent or guardian feeling aggrieved by an adverse decision of a superintendent of a state school pertaining to admission, placement or discharge of his ward may apply to the supervisor of the division[of Children and Youth Services, of the Department of Institutions] for a review and reconsideration of the decision....In the event of an unfavorable ruling by the supervisor, such parent or guardian may institute proceedings in the superior court...and have such decision reviewed and its correctness, reasonableness, and lawfulness decided in an appeal heard as in initial proceeding on an original application. Said parent or guardian shall have the right to appeal from the decision of the superior court to the supreme court of the state of Washington, as in civil cases" -- Washington, § 240.

71. In addition to the charted procedure of ch. 51 for admission to a state or county institution, ch. 58, § 05(2) provides that "any person may voluntarily place himself" in a private "hospital, asylum or other institution for the care, treatment or relief of insane or feeble-minded persons, or both" -- Wisconsin.

72. DIV'N OF MENTAL HYGIENE, DEP'T OF PUBLIC WELFARE: MANUAL OF MENTAL RETARDATION ch. 12, § 12.02, at 1 (1963): "(A) The admission of mentally retarded persons to the colonies and training schools by the Voluntary Application Procedure has been used infrequently in the past. (B) It is now generally accepted that the voluntary admission procedure should be used except for persons who may be potentially harmful to themselves or others and for those whose health and welfare would be jeopardized by remaining in their own homes or in the community and the authority of the court is required to accomplish admission." See generally DIV'N OF MENTAL HYGIENE, DEP'T OF PUBLIC WELFARE: THE MENTALLY RETARDED; GUIDELINES FOR DETERMINING NEED FOR RESIDENTIAL CARE (1963) -- Wisconsin.

73. DIV'N OF MENTAL HYGIENE, DEP'T OF PUBLIC WELFARE: MANUAL OF MENTAL RETARDATION ch. 12 § 12.03(C), at 2 (1963): "It shall be the responsibility of the staff at the respective colonies and training schools and other Division [of Mental Hygiene] staff, upon receiving an initial inquiry regarding admission, to arrange for an appropriate study and evaluation which will permit a determination as to whether or not the person is in need of institutional care. This may be accomplished entirely by a colony staff, with the assistance of a community agency, or by referral to the Central Wisconsin Colony and Training School Developmental Evaluation Clinic...." -- Wisconsin.

III. INSTITUTIONALIZATION PROCEDURES

C. Institutionalization by Certification

1. Applicants and Patients' Consent

Nineteen provisions for institutionalization in the statutes of 16 states are classified as certification procedures.[1] It is possible to consider four of these procedures as providing for a kind of "voluntary" (or what is often call "non-protested") admission, since three clearly may not be used over the patient's objection, and one expressly requires the consent of the prospective patient or "his parent, guardian or person having lawful custody of him."[2] However, most of the remaining procedures are not clearly "involuntary." Although they are not explicitly dependent upon consent or acquiescence, neither do they expressly authorize the use of compulsion, except in emergency situations where a prospective patient is considered dangerous.[3] These 15 procedures have other "voluntary" aspects: eight of them expressly include guardians or other fiduciaries in the class of authorized applicants; practically all of them would permit parental applications on behalf of minor children; and one procedure even includes prospective patients among potential applicants.[4]

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[1] The procedures are tabulated in Chart III.
In addition, the procedures of New York, Pennsylvania, and South Carolina tabulated as "judicial" in Chart IV may operate essentially as certification procedures in cases in which a hearing is neither requested nor ordered by the court. See also the Illinois provision for "a hearing upon the petition and the certificates," cited note 21, Chart IV-A, and other judicial procedures cited note 14, Section III.D.1.b. infra.

[2] See "Consent of Patient" column, Chart III.

[3] Exceptions are the provisions of ILL. STAT. ch. 91-1/2, § 7-1 (1965), for a peace officer to apprehend and transport a patient to an institution, and the provisions for judicial approval and commitment in the procedures of Louisiana and Wisconsin (see notes 17, 29, Chart III). See also the "judicial" procedures cited note 1 supra.

[4] See "Application by Interested Party" column, Chart III. Compare Section III.B.1. supra.

Aside from the fact that all five provisions for application by "any person"[5] occur in "involuntary" procedures, there is no significant difference in the various applicants authorized by the two kinds of certification procedures. Relatives of the prospective patient are most commonly included, although those authorized may be differently enumerated or preferentially ordered. Other interested parties frequently designated are guardians or other fiduciaries, friends, or de facto custodians of the patient such as "the person with whom such individual is residing, or at whose house he may be."[6] Among officials permitted to apply, health, welfare, or charity officers are most often mentioned.[7] The statutes of seven states specifically authorize applications by the superintendent, the head, or a staff physician of an institution "in which such individual may be," thereby presumably permitting the same person to make and approve an application. Peace officers may apply for institutionalization under three procedures in two states.

Except for the Delaware procedure[8] and possibly the Pennsylvania procedure,[9] no age restrictions are placed on patients admissible under certification procedures. However, in the absence of provisions for parents or guardians to exercise the right of proposed patients to object to institutionalization, at least the three procedures which specifically include this right may be intended to apply only to competent adults. On the other hand, these and other certification procedures may be designed to provide a relatively simple method of institutionalizing retardates who are either unwilling or unable to apply for voluntary admission, but who would not protest institutionalization initiated by others.[10] Consistent administration of these statutes would appear to require clarification of the degrees of consent and competency which they contemplate. And for those procedures which are intended to be truly consensual or "non-protested," administrative considerations, if not principles of due process, seem to dictate some statutory assurance of an opportunity for a proposed patient to express his consent or protest, as well as specification as to whether this opportunity must precede or may follow actual admission to an institution.[11]

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[5] See "Application by Any Person" column, Chart III.

[6] See "Application by Interested Party" column, Chart III.

[7] See "Application by Official" column, Chart III.

[8] See note 10, Chart III.

[9] See note 26, Chart III.

2. Procedures and Criteria

Provisions for expert certification of a person's retardation and need for institutionalization predominately require the certificates of one or two examining physicians. However, about a third of the procedures either include psychological testing as a part of the requisite medical examination, or provide alternatively for certification by a physician and a psychologist, by a physician or a psychologist, or, rarely, by only a psychologist. Occasionally the statutes express a requirement or preference for certifying physicians to be psychiatric or pediatric specialists. There may also be restrictions on physicians related by blood or marriage to the prospective patient, or connected by proprietorship or employment with the institution to which admission is proposed.[12]

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[10] Questions of competency are also complicated by criteria specified for admission, or the lack of such criteria. See Section III.C.2. infra.

[11] None of the certification procedures explicitly provides for pre-admission notice to the proposed patient of a right to object. For post-admission notice of rights of review or release, see Section III.C.3. infra.

[12] This description of certification requirements applies equally to the 17 voluntary and 22 judicial procedures which include certification provisions.

Two certification procedures require the approval or endorsement of a judge.[13] Although these statutes are not entirely clear, they seem to limit the judicial function to a review of the form, rather than the substance, of the application and supporting certificate(s).[14] If, on their face, these documents satisfy statutory specifications, and if no abuse of the procedure is apparent, the judge issues an order of commitment.

Certification procedures are almost evenly divided between those which apply only to state institutions, and those which may be used for admissions to either public or private institutions.[15] Practically all of these procedures, however, require the further approval of institutional authorities prior to actual admission.[16] For state institutions, this approval is sometimes specifically conditioned upon the "availability of suitable accommodations."[17] For seven procedures in five states, the statutes require re-examination of the patient by the institution.[18]

Although several states provide special criteria, in addition to statutory definitions of the mentally retarded, for institutionalization by certification, these criteria are not always clear or consistent. Provisions which may be applicable to both the mentally ill and the mentally retarded are particularly confusing in this respect.[19] Some of these procedures seem to require medical certification that a proposed patient either "is likely to injure himself or others" or "lacks sufficient insight or capacity to make responsible application" for institutionalization; but if post-admission examination discloses that the patient meets neither of these criteria, he must be discharged unless he applies for voluntary admission. For the mentally retarded, these procedures appear to be primarily applicable to persons who are incapable of determining their own institutionalization. A contrary interpretation is perhaps indicated for those procedures which provide all patients institutionalized by certification with an option of voluntary status.[20] For the majority of certification procedures without special criteria or voluntary options, intended coverage is difficult to discern from the statutes.

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[13] See "Admission -- Approval by Court" column, Chart III. See also the "judicial" procedures cited note 1 supra.

[14] No provision is made for hearings on the merits, although the Wisconsin procedure includes provision for appointment of a guardian ad litem. See note 29, Chart III.

[15] See "Place" columns, Chart III.

[16] See the last two columns under "Admission -- Approval by --", Chart III.

[17] See "Admission Criteria -- Available Accommodations" column, Chart III.

[18] See "Admission Criteria -- Mental Examination" columns, Chart III.

[19] See, e.g., the provisions of Alaska, Ohio, and West Virginia, cited in the "Admission Criteria -- Special Criteria" column, Chart III, and notes 4, 25, 27, Chart III, respectively.

3. Review, Release, and Discharge

All but one of the 16 states with procedures for institutionalization by certification provide a patient thus admitted, or someone acting in his behalf, with either: (1) a right to habeas corpus proceedings, statutorily broadened to permit judicial inquiry into the patient's mental condition at the time the writ is issued;[21] (2) a right to judicial review of the patient's admission in a trial de novo;[22] or (3) a right to be released upon request to the institution.[23] Six states provide more than one of these rights. Explicit provisions for notifying a patient (or his representative) of his rights of review or release occur in connection with ten procedures in eight states.[24] A majority of these provisions require an institution to furnish not only information but also assistance in exercising the relevant rights.

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[20] See the provisions of Illinois and Wisconsin cited in the "Admission Criteria -- Special Criteria" column, Chart III.

[21] See "Judicial Review or Extension -- Habeas Corpus" columns, Chart III. The first column also includes statutory provisions for habeas corpus which, unless they have been judicially expanded, presumably retain the common law limitation that the writ is available only to test the legality of the original detention. Provisions for enlarged habeas corpus are indicated in the second column, "Review of Mental Condition."

[22] See "Judicial Review or Extension - Appeal and Commitment Proceedings" columns, Chart III. As indicated by the second column, "Jury Trial," half of these provisions include the right to trial by jury.

[23] See "Release on Request" columns, Chart III. These provisions are generally similar to those attached to voluntary procedures, as described in Section III.B.3.a. supra.

In addition to these rights, six procedures in four states limit institutionalization by certification to a certain period, ranging from 35 to 90 days, after which the patient must be either judicially committed, voluntarily admitted, or administratively discharged by the institution.[25] Statutory provisions for administrative discharge are applicable to patients admitted by certification in all but two of the states.[26] Procedures and criteria specified for discharge are not generally different from those previously described for voluntary patients,[27] except that there are no provisions for discharges which "contribute to the most effective use" of the institution, whereas there are several proscriptions of discharges which would be "detrimental to the public welfare." Especially in the latter statutes, discharge may be made dependent upon a patient's demonstration of his "fitness to be at large" while conditionally released for a year or more, or upon the ability of the patient's relatives, friends, or community agencies to provide supervision over him.

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[24] See "Patient Informed of Right to Review or Release" column, Chart III.

[25] See "Duration -- Maximum" column, Chart III.

[26] See "Administrative Discharge" column, Chart III.

[27] See Section III.B.3.b. supra.

III. INSTITUTIONALIZATION BY CERTIFICATION OF THE MENTALLY RETARDED

STATE AND STATUTE	APPLICATION BY			Consent of Patient [n.a]	CERTIFICATION			ADMISSION						
	Any Person	Official	Interested Party [n.a]		By	When Executed		Approval By			Available Accommodations	Criteria		
						After Examination	Before Application or Admission	Court [n.a]	Superintendent or Head of Institution	State Officer or Agency		Mental Examination		Special Criteria
												By	When Conducted	
ALASKA STAT.(1962) Title 47,ch.30 [n.1]		§020(2) peace officer, Dep't of Health & Welfare, or head of institution where patient may be	§§020(2),340(8) guardian, spouse, parent, adult child, or next of kin [n.2]		§§020(2),340(9) physician		§020 (2) 15 days		§020 (2)	§340 (10)		§040(a),340(3) physician [n.3]	§040(a) within 48 hours after admission	§040(b),(c) [n.4]
DELAWARE CODE(1964 Supp.) Title 16 [n.10]		§5522(a)(1) Mental Hygiene Clinic or State Psychiatrist (recommendation) [n.11]			§5522(a)(1) at least two physicians; clinical psychologist	§5522 (a)(3) one week	§5522 (a)(3) two weeks		§5522 (a)					§5522(a) presence in community detrimental to self or community
ILLINOIS STAT.(1965 Ch.91-1/2 [n.12]		§§6-1,7-1 peace or health officer, charity or welfare officer or sup't of public hospital	§§6-1,7-1 person with whom residing; parent, spouse,sibling,or child thereof; or relative or friend	§6-1 does not object	§6-1 one physician [n.13]	§6-1 10 days	§6-1 10 days		§6-1			§6-1 [n.13]	§6-1 forthwith [n.13]	§§6-1,7-6 patient has option of voluntary status
					§7-1 two physicians	§7-1 10 days	§7-1 10 days		§7-1			§7-1 staff physician	§7-1 forthwith	
KENTUCKY REV.STAT.(1966 Supp.) Ch.210		§280(1) staff physician of hospital in which patient may be	§280(1) relative, spouse, friend or guardian		§280(1) two physicians	§280 (1) fifteen days	§280 (1) fifteen days							
LOUISIANA REV.STAT.(1950; 1965 Supp.) Title 28 [n.16]	§52 if no relatives		§52 near relative, or if none, near friend or curator		§52 coroner and other physician	§52 fourteen days	§52 three days	§52 district judge [n.17]	§§50 (2), 52					
MAINE REV.STAT.(1964; 1966 Supp.) Title 34		§2152(1)(A) health or welfare officer, or head of institution in which patient may be	§2152(1)(A) parent, relative, spouse or guardian		§2152(1)(B) psychiatrist or physician and psychologist [n.18]				§2152 (1)(A)		§2152			
MARYLAND CODE(1964;1965 Supp.) Art.59		§32 charity officer §4 for indigent, consent of county comm.'rs or Baltimore welfare dep't	§32 family member, near relative or friend, or person with whom residing		§§1,31,32,33 two physicians	§31 one week	§31 thirty days		§32					
		§1 for indigent, county comm.'rs or Baltimore welfare dep't												

STATE AND STATUTE	PLACE		DURATION		JUDICIAL REVIEW OR EXTENSION				Patient Informed of Right to Review or Release	RELEASE ON REQUEST [n.a, b]						ADMINISTRATIVE DISCHARGE
	Public Institution	Private Institution	Minimum	Maximum [n.b]	Habeas Corpus		Appeal and Commitment Proceedings			Request				Time for Release	Extension by Commitment	
					Petition By	Review of Mental Condition	Petition By	Jury Trial		By Patient	By Interested Party	By Any Person	Required to be Written			
ALASKA STAT.(1962) Title 47,ch.30 [n.1]	§§020 (2), 340 (6) [n.5]	§§020 (2), 340 (6) [n.5]	§050 (a) 30 days		§100 patient or interested party [n.2]		§060 patient, interested party, or peace officer [n.2,6]	§070(b) if requested by patient or counsel [n.7]	§050(b)	§050 (a) [n.8]	§050(a) interested party or peace officer [n.2,8]		§050 (a) [n.9]	§050(a) if 30 days after admission, immediately	§050 (a)(3) [n.6]	§§040(b), 200,220
DELAWARE CODE(1964 Supp.) Title 16 [n.10]	§5522 (a)				tit.10, §§6902,6905 (1953) patient or any one		§5522(b) patient or relative	§5522(b) if requested								
ILLINOIS STAT.(1965 Ch.91-1/2 [n.12]	§1-4, 6-1, 7-1	§1-4, 6-1, 7-1		§§6-1, 7-5 60 days	§10-13	§10-14	§§6-1;7-3,4,5 within 60 days,by patient, relative, friend, or interested person;after 60 days,by sup't. [n.14,15]	§§8-6,7,8 if requested or desirable [n.7]	§§6-1,7-2 notice and consultation with judicial officer							§§6-1; 7-1,5
KENTUCKY REV.STAT.(1966 Supp.) Ch.210	§280 (1)				ch.419,§020 (1963) patient				§280(4) information and assistance	§280 (4)	§280(4) parent, spouse, relative, or guardian		§280 (4) [n.9]	§280(4) within five days	§280 (5)	
LOUISIANA REV.STAT.(1950; 1965 Supp.) Title 28 [n.16]	§§2 (8), 50(2) 52	§§2 (8), 50(2) 52			§171(6) patient		§56 patient									§§96(G),97
MAINE REV.STAT.(1964; 1966 Supp.) Title 34	§§2151, 2152				§2153 patient, spouse,or adult relative or friend				[n.19]		§2156 parent, guardian or custodian		§2156	§2156 no more than 10 days	§2156	§2156
MARYLAND CODE(1964;1965 Supp.) Art.59	§32	§32			§20 state's attorney [n.20] cit.42,§3 patient or anyone	§20	§21 patient or anyone [n.21]	§21 if requested by patient or anyone [n.7		§32	§42 relatives or friends maintaining patient	§32	§32	§32 §42 any time	§32	§§1,32,42
	§§1, 5,44				[same as above]		§1 patient,relative, friend,county comm.'rs or Baltimore welfare dep't [n.21]	§1								

III. INSTITUTIONALIZATION BY CERTIFICATION OF THE MENTALLY RETARDED [n. a, b]

STATE AND STATUTE	APPLICATION BY			Consent of Patient [n.e]	CERTIFICATION			ADMISSION							PLACE		DURATION		JUDICIAL REVIEW OR EXTENSION				Patient Informed of Right to Review or Release	RELEASE ON REQUEST						ADMINISTRATIVE DISCHARGE
						When Executed		Approval By			Criteria								Habeas Corpus		Appeal and Commitment Proceedings			Request						
												Mental Examination																		
	Any Person	Official	Interested Party [n.e]		By	After Examination	Before Application or Admission	Court [n.a]	Superintendent or Head of Institution	State Officer or Agency	Available Accommodations	By	When Conducted	Special Criteria	Public Institution	Private Institution	Minimum	Maximum [n.b]	Petition By	Review of Mental Condition	Petition By	Jury Trial		By Patient	By Interested Party	By Any Person	Required to be Written	Time for Release	Extension by Commitment	
MISSISSIPPI CODE(1952) [n.22]	§6909-12 citizen		§6909-12 patient or relative [n.22]	[n.22]	§6909-12 two physicians				§6909-12			§6909-12 director and staff of hospital	§6909-12 before admission		§6909-12				[illegible] patient,relative,or any other person		§6909-08,12 patient, relative or any other person									§§6916, 6919
MISSOURI REV.STAT.(1959) Ch.202 [n.23]		§601(1) health or welfare officer,or head of institution in which patient may be [n.23]	§601(1) friend,relative, spouse or guardian		§601(1) two physicians preferably specialists in pediatrics or psychiatry,or physician and psychologist [n.23]	§601 (1) one year	§601 (1) one year		[n.23]	§§595 (1), 601(1)	§595 (1)				§§595 (1), 601(1) [n.23]			[n.23]	ch.532, §§010,020 (1949;1965 Supp.) patient or some person											§635
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.) [n.24]		§§123,124(2) charity or welfare officer,or N.Y.C. comm'r of hospitals [n.24]	§§123,124(2) person with whom residing, parent, spouse,sibling, child,nearest relative or friend, or committee of such persons	§123 does not object	§§2(18),(19);121 (2);123 physician or psychologist		§§121 (3), 123 six months		§123		§120 state institution				§123	§123	§123 (optional) sixty days		§426 patient, relative or friend	§426	§133(1) if discharge refused, person requesting discharge		§88	§123		§123	§123	§123 fifteen days (optional; if after sixty days)	§123	§133(1),(2)
OHIO REV.CODE(1965 Supp.) Title 51 [n.12]		§06(A) health or welfare officer,or head of institution in which patient may be	§06(A) friend,relative, spouse or guardian	§06 does not object in writing	§06(B) two physicians	§06 ten days	§06 ten days		§§06, 08			§19 hospital staff §§01(E),19 physician [n.3]	§19 as soon as practicable §19 within five days after admission	§19 [n.25]	§§01 (F), (G); 06,08	§§01 (F), 06,08		§06 ninety days	§30 patient or friend				§24 information and assistance	§24	§24 guardian, spouse, or adult next of kin		§24	§24 within ten days	§§24, 32	§§21,23
	§08 (A)				§08(B) at least one physician	§08 three days	§08 three days											§08 sixty days												
PENNSYLVANIA STAT.ANN.(1954; 1966 Supp.) Title 50 [n.26]	§1181 (b)	§1181(b) if no guardian, friend or relative by officer or agent of health or welfare	§1181(b) relative,friend, guardian,or person having custody or support		§§1072(13);1181(d); 1182(a)(1)-(9.1) physician;including psychological tests	§1182 (a)(7) a week	§1181 (d) six months		§1181 (f)						§§1072 (8)(14); 1181(a) (a)	§1072 (8), (14); 1181(a) (2)			§§1241;1482(a) patient or anyone	§1482 (b)										§§1301-1303,1305, 1481(d)
TENNESSEE CODE(1966 Supp.) Title 33		§§501(2),502 health or welfare officer,or school official	§501(2) spouse,adult child or close adult relative	§501(2) patient, parent,guardian or custodian	§501(2) physician or physician and psychologist	§501 (2) thirty days	§501 (2) thirty days		§501						§§302 (b), 501	§§302 (b), 501			§306(1) patient or friend	§316			§306(h) information and assistance							§510
VIRGINIA CODE(1953;1966 Supp.) Title 37	§103				§103 two physicians				§§103, 107						§§1.1 (12), 103	§103		§106, 111 ninety days [n.27]	§§122,123 patient	§§122, 123	§§61, 109, 111 any person									§§96, 111

III. INSTITUTIONALIZATION BY CERTIFICATION OF THE MENTALLY RETARDED [n. a, b]

STATE AND STATUTE	APPLICATION BY			Consent of Patient [n.a]	CERTIFICATION			ADMISSION							PLACE		DURATION		JUDICIAL REVIEW OR EXTENSION				Patient Informed of Right to Review or Release	RELEASE ON REQUEST						ADMINISTRATIVE DISCHARGE
	Any Person	Official	Interested Party [n.a]		By	When Executed		Approval By			Criteria				Public Institution	Private Institution	Minimum	Maximum [n.b]	Habeas Corpus		Appeal and Commitment Proceedings			Request				Time for Release	Extension by Commitment	
						After Examination	Before Application or Admission	Court [n.4]	Superintendent or Head of Institution	State Officer or Agency	Available Accommodations	Mental Examination		Special Criteria					Petition By	Review of Mental Condition	Petition By	Jury Trial		By Patient	By Interested Party	By Any Person	Required to be Written			
												By	When Conducted																	
WEST VIRGINIA CODE(1965 Supp.)		§2658(a) healthofficer, public welfare caseworker, or head of institution where patient may be	§2658(a) parent, guardian, spouse, adult next of kin or friend		§2658(b) two physicians	§2658 fifteen days	§2658 fifteen days		§§2600, 2663			§2663 physician	§2663 within five days after admission	§§2658(b), 2663 dangerous or incapable of application for hospitalization	§§[illegible], 2648, 2658			§2663 thirty-five days [n.27]	§5324(1961) patient or some one		§2663 superintendent [n.27]		§2663 information and assistance	§2663	§2663 spouse, relative, guardian or friend		§2663	§2663 forthwith	§2663	§2663
WISCONSIN STAT (1965) Ch.51		§065(2) two physicians (to court)	§065(1) parents or guardian (to physicians)		§065(1) two applicant physicians [n.28]			§065 (2), (3) county or juvenile [n.29]						§10(4) patient may apply for voluntary admission [n.30]	§§22 (1), 065(3)				ch.292, §§01, 03(1958) patient or some person	ch.292 §01(2) (1958) (sanity)	§11 patient, guardian, relative or friend, or dep't of public welfare [n. 31]	§03 if requested by patient, relative or friend [n.7]								§22(5)

Chart III. INSTITUTIONALIZATION BY CERTIFICATION OF THE MENTALLY RETARDED

FOOTNOTES

a. The institutionalization procedures charted in Chart III comprise a somewhat miscellaneous category ranging between the "voluntary admission" procedures of Chart II and the "judicial commitment" procedures of Chart IV. On the one hand, this category includes some procedures which provide for application by a person legally empowered to act for a prospective patient (if "any person" or an "official" may also apply), and procedures which may not be employed over the objection of a prospective patient (in the single instance of a charted procedure which alternatively provides for application by the prospective patient, the procedure is charted again as "voluntary" in Chart II). At the other extreme, the category also includes procedures which require judicial endorsement or approval of an application, and procedures which require judicial review of admissions. The single feature common to all the included procedures, however, is a requirement that an application be supported by medical or psychological certification.

b. Many statutory provisions for temporary, observational, or emergency institutionalization are "certification" procedures. For purposes of Chart III, a procedure is not included unless it may result in either indeterminate institutionalization or institutionalization limited to a maximum of more than thirty days.

1. The charted procedure for the mentally ill is also applicable to the mentally retarded because mental retardation is included in the definition of "mental illness" -- Alaska, §340(10).

2. "Interested party" is defined as "an interested, responsible adult including the legal guardian, spouse, parent, adult children, or next of kin..." -- Alaska, § 340(8).

3. Examination is conducted: by a "designated examiner" who is a licensed physician designated by the state health agency as specially qualified in the diagnosis of mental or related illness -- Alaska, Ohio.

4. Subsections 040(b) and 040(c) are unclear as to both their meaning and their applicability to the mentally retarded. However, the result of these subsections would seem to be that a patient admitted by certification under §020(2) may be retained under §040(b) if he is considered either dangerous or incapable of requesting his own hospitalization, but if not, he may remain voluntarily if he applies for admission under §020(1) and §040(c) -- Alaska.

5. The institution may be "located in the state or in another state" -- Alaska.

6. Commitment proceedings may not be commenced unless release of the patient is first requested -- Alaska, §070(k).

7. A jury is composed of: "six adult residents" -- Alaska; "six persons, at least one of whom shall be...a physician or a psychologist" -- Illinois; "twelve men" -- Maryland; "6 people" whose verdict must be "agreed to and signed by at least 5 of the jurors" -- Wisconsin.

8. If the patient is under 18, his discharge may be conditioned upon the consent of his parent or guardian -- Alaska, §050(a)(2).

9. A patient's request for release need not be written, but an interested party must request "in writing" -- Alaska, Kentucky.

10. The charted procedure may be used only for an adult -- Delaware.

11. But see Letter From Peter A. Peffer, M.D., Superintendent, Hospital for the Mentally Retarded, to The George Washington Univ. Institute of Law, Psychiatry and Criminology, Oct. 8, 1965: "...cases were referred to the institution for the retarded through the Mental Hygiene Clinics. This has already been eliminated. The cases are now referred directly to the institution" -- Delaware.

12. The charted procedures for the mentally ill are specifically made applicable to the mentally retarded -- Illinois, §3-1; Ohio, ch. 5125, §25.

13. "The superintendent of a hospital shall receive and examine forthwith... Within 15 days after admission, if the superintendent determines that the patient should be hospitalized...the certificate of another examining physician, supporting the application, shall be filed with the hospital" -- Illinois.

14. See also the procedure for judicial discharge tabulated in Chart IV-D -- Illinois.

15. See also §7-2: "As soon as practicable after admission...the patient shall consult with a magistrate or other judicial officer....If the patient indicates in any manner that he desires...[a] hearing or if the magistrate or other judicial officer believes that there is a reasonable doubt as to whether the patient should be detained...a hearing shall be held, within five days thereafter, in the judicial circuit where the patient is then present and in accordance with Article 8....The magistrate or other judicial officer may discharge from the hospital any patient if he does not believe that probable cause for the further hospitalization of the patient has been shown" -- Illinois.

16. It is not entirely clear that the charted procedure applies to the mentally retarded. "Coroner's commitment" may be used "to have a patient committed to an institution" (§ 52), and it is charted here because of the inclusion of a "mentally defective" person in the definition of "patient" [§ 2(7)], and the inclusion of "places for the care of mental defectives" in the definition of "institution" [§ 2(8)]. See also § 50(2) -- Louisiana.

17. "...the application for commitment shall be presented to the judge of the judicial district court or the civil district court for the parish from which the patient is to be committed, for his approval or disapproval. The application for commitment can be acted upon by the judge in open court or in chambers, in term time or in vacation, without the necessity [of] formally docketing and allotting said application" -- Louisiana.

18. "...except that, certification by a psychologist shall not be required if the person, as determined by the superintendent [of Pineland Hospital and Training Center], is so severely retarded as to be untestable by formal methods" -- Maine.

19. The patient is not informed, but "the Superintendent of the Pineland Hospital and Training Center shall inform the legal guardian, spouse, parent, relative or a friend of any patient...in writing, on admittance, of the patient's right to release as provided in this section and shall provide reasonable arrangements for making and presenting requests for release" -- Maine, §2156.

20. The state's attorney applies at the request of "the superintendent or the Commissioner of Mental Hygiene" -- Maryland.

21. The procedure of §21 is also available for patients committed pursuant to §1.
    In addition to the charted procedures, §24 provides the Department of Mental Hygiene with "the same powers as belong to a justice of the peace" in conducting an administrative hearing whenever "there is reason to believe that any person is wrongfully deprived of his or her liberty"... -- Maryland.

22. The charted procedure is also tabulated in Chart II because of its provision for application by a prospective patient in addition to application by "any relative" or "any citizen" -- Mississippi.

23. In addition to the charted procedure, there is a special provision of §450 whereby "diagnosis, treatment and temporary care, for a period not to exceed six weeks, may be given at any state hospital, at the discretion of the superintendent, to any indigent resident of this state who is not insane but who is suffering from a nervous or mental illness or other affliction for the treatment of which the hospital has especial facilities and who, in the absence of such treatment or care, is likely to become a public charge. The county or city health official shall send his diagnosis with each patient and a request for such treatment...." -- Missouri.

24. In addition to the charted procedure, see the provisions of § 24. Section 24(2) provides that "the spouse of a mentally disabled person and the parents of a mentally disabled person under the age of twenty-one years, if of sufficient ability, and the committee or guardian of the person and estate of such person, if his estate is sufficient for the purpose, shall cause such person to be properly and suitably cared for and maintained." Section 24(3) provides that "the commissioner [of Mental Hygiene] and the health officer of the city, town or village, and the director of community mental health services of the city, county, part-county or joint counties, where any such mentally disabled person may be, or in the city of New York the commissioner of hospitals, or in the city of Albany the commissioner of public welfare, may inquire into the manner in which any such person is cared for and maintained. If, in the judgment of such commissioner, health officer or director, as the case may be, such mentally disabled person is not properly or suitably cared for and maintained, he may require those legally responsible for the care and maintenance of such mentally disabled person to provide a suitable place for the care of such mentally disabled person or may cause such mentally disabled person to be admitted to a hospital or institution..." -- New York.

25. The criteria specified for admission are unclear as to both their applicability to the mentally retarded (see ch. 5125, §25) and their meaning. Subsections 01(E) and 06(B) require that a prospective patient must be certified prior to admission to be either dangerous or incapable of making "responsible decisions with respect to his hospitalization." Subsection 08(B) requires pre-admission certification that the prospective patient is dangerous. Section 19 requires that any patient be discharged unless he is considered to be dangerous upon post-admission examination -- Ohio.

26. The charted procedure may be used for hospitalization of "any resident mental defective under twenty years of age and incapable of being properly educated and trained in the public schools, or over twenty years of age and of such inoffensive habits as to make him a subject for classification and discipline in a school" [§ 1181(a)(2)]. However, this procedure "shall not apply to the admission of mentally defective or epileptic children sought to be admitted to any State institution from any judicial district in which there is a municipal court vested with the exclusive jurisdiction over proceedings concerning children suffering from epilepsy and nervous and mental defects" [§ 1181(g)] -- Pennsylvania.

27. "...In no case shall any such person be held in the hospital, colony or private institution for more than ninety days, unless in the meantime he shall make application for further care and treatment as a voluntary patient...or is committed as a...mentally deficient person..." -- Virginia; "...the superintendent shall, within thirty days from the date of such determination by the designated examining physician, institute legal proceedings as provided in [§ 2661]...If such proceedings are not instituted within such thirty-day period, the patient shall be immediately released or permitted to change his status to that of voluntary hospitalization..." -- West Virginia.

28. Certification and application are made by "2 physicians licensed in Wisconsin specializing preferably in pediatric or psychiatric medicine, whose opinions concur with regard to said mental deficiency..." -- Wisconsin.

29. "The court to whom said report and recommendation [of the two certifying physicians] is forwarded may enter same in the records of his court and may issue an order of commitment of the patient to the southern or the northern colony and training school, which order will authorize the admission of the mentally deficient patient to the specified colony and training school forthwith upon issuance. In all cases in which a parent supervised the person alleged to be mentally deficient, the court may, and in cases in which neither parent supervises, but there is a duly appointed general guardian, the court shall appoint a guardian ad litem in advance of making any entry in the court records, and in advance of issuing an order of commitment" -- Wisconsin.

30. DIV'N OF MENTAL HYGIENE, DEP'T OF PUBLIC WELFARE: MANUAL OF MENTAL RETARDATION ch. 12, §12.02(B), at 1 (1963): "It is now generally accepted that the voluntary admission procedure should be used except for persons who may be potentially harmful to themselves or others and for those whose health and welfare would be jeopardized by remaining in their own homes or in the community and the authority of the court is required to accomplish admission " -- Wisconsin.

31. "When a proceeding for retrial or re-examination is not pending in a court of record and a jury trial is not desired by the persons authorized to commence such proceeding, the department [of Public Welfare] may, on application, determine the mental condition of any patient committed to any institution...and such determination shall have the same effect as though made by the county court...." -- Wisconsin, §11(7).

III. INSTITUTIONALIZATION PROCEDURES

D. Judicial Commitment

The great majority of judicial procedures are so classified because the statutes give courts jurisdiction to determine whether a person is mentally retarded and requires institutionalization.[1] Several procedures, however, may be considered "administrative" because these determinations are made, not by a judge or jury, but by a board or commission. In the purest form of administrative institutionalization, as exemplified by the procedures of three states, a special county board is given exclusive jurisdiction both to conduct hearings and to order commitments.[2] In another group of five states, courts have original jurisdiction, but they must appoint a commission or committee of experts to examine the prospective patient, to hear other evidence, and to report findings and recommendations to the court; in accordance therewith, the court must either dismiss the case or commit the patient.[3] Because the provisions are mandatory, these statutes may also be categorized as "administrative." But this designation does not seem applicable to a third group of states in which the court, in its discretion, may appoint such a commission and, if it does so, may accept or reject the commission's findings and recommendations.[4] The latter statutes do not resemble administrative procedures as much as they do typical judicial procedures with provisions for discretionary acceptance of advice obtained from certifying experts, appointed examiners, masters or referees, or temporary institutionalization. Because administrative procedures thus gradate into judicial procedures, and because in most other respects the two kinds of procedures are undifferentiated, they are not separately classified in this report.

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[1] Courts having jurisdiction are indicated in the "Court or Commission" column, Chart IV-A.

[2] The county commissions of North Dakota, South Dakota, and West Virginia are indicated in the "Court or Commission" column, Chart IV-A. Each of these commissions includes judicial representation and therefore possesses judicial powers. See note 49, Chart IV-A.

[3] The provisions of Colorado, Florida, Georgia, Mississippi, and Virginia are noted in the "Hearing Held Before Special Commission or Referee" column, Chart IV-B. Although the statutes are not always clear on this point, they seem to indicate that the hearing before the commission is presided over by the appointing judge.

[4] The optional provisions of Illinois, Iowa, and Louisiana are designated in the "Hearing Held Before Special Commission or Referee" column and the "Dismissal of Jury Verdict or Commission Findings" column, Chart IV-B.

1. Pre-Hearing Procedures

a.) Petitioners and Patients

Commitment provisions are usually applicable to retarded persons regardless of their age. Only one judicial procedure is restricted to prospective patients above the age of five, three are limited to minors or persons under 18, and one excludes persons over 45.[5] However, age restrictions may be imposed by other statutes which regulate institutions for the retarded, or by administrative regulations which supplement the statutes.[6]

A petition for the commitment of an allegedly mentally retarded person must be filed with the proper court by a person authorized by statute to do so.[7] Under 27 procedures in 25 jurisdictions, "any person" may submit a petition, although it is sometimes required that the petitioner be a citizen or a resident of the state, an adult, or a person approved by the court.[8] For 14 of these procedures no other petitioners are specified, but for the remaining 13, as well as 14 other procedures, the statutes provide that certain officials and/or interested parties may petition. Authorized officials commonly include health, welfare, or education officers or agencies; superintendents, staff members, or other institutional authorities; officials of city, county, or other local governments; correctional and police officers; and physicians.[9] Provisions authorizing petitions by interested parties are often quite detailed in enumerating and preferentially ordering the designated relatives, fiduciaries, and friends. Among these groups, guardians and parents are most frequently specified.[10]

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[5] See "Age Limits" column, Chart IV-A.
Although not affecting the applicability of a statutory procedure, the age of a prospective patient may determine which court has jurisdiction over the petition. Eight procedures alternatively provide for juvenile courts to hear cases involving minors, and juvenile courts have exclusive jurisdiction under the two procedures limited to persons under 18. See "Court or Commission" column, Chart IV-A.

[6] For examples of such regulations, see those of Michigan, Oregon, and Vermont, cited notes 34, 52, 59, Chart IV-A, respectively.

[7] However, the procedural statutes of five states (Maryland, Massachusetts, New Hampshire, Rhode Island, and South Dakota) make no mention of authorized petitioners.

b.) Certification and Examination

Twenty procedures in 18 states require that petitions be supported by the certificates of one or more experts, usually physicians, who have examined the prospective patient.[11] In at least two other states such certification is optional.[12] Statutes of five states provide that, in lieu of an accompanying certificate, the court may accept an affidavit of the petitioner that the prospective patient has refused or is unable to submit to examination.[13] Certification provisions in judicial procedures serve both to prevent groundless petitions and to provide expert opinions to the courts. In several states it is possible for the certificates to constitute the only expert evidence presented to the court,[14] and thus for the procedures to operate essentially as institutionalization by certification.[15]

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[8] See "Petition by Any Person" column, Chart IV-A.

[9] See "Petition by Official" column, Chart IV-A.

[10] See "Petition by Interested Party" column, Chart IV-A.

[11] See "Petition Supported by Certification by --" column, Chart IV-A. For discussion of certification provisions see Section III.C.2. supra.

[12] In addition to the specific provisions of Colorado and Ohio, the Illinois procedure presumably includes optional certification. See note 21, Chart IV-A. In Florida one of the three required petitioners must be a physician, and a few other statutes use means besides certification to assure judicial access to existing medical information regarding the prospective patient. See notes 2, 53, Chart IV-A.

Provisions for pre-hearing examination of the prospective patient are more prevalent statutory means of providing the courts with expert evidence. For 26 procedures in 25 jurisdictions, the statutes require the judge, upon receipt of a petition, to appoint examiners and order their examination of the respondent.[16] To this group must be added the procedures of five states under which the court must appoint a commission, consisting of or including two experts, to conduct both an examination and a hearing.[17] Nine procedures in eight states have discretionary provisions for court-appointed examiners,[18] and in three states an examining and hearing commission is optional.[19]

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[13] See note 18, Chart IV-A.

[14] The possibility exists under procedures of Hawaii, Louisiana, Nebraska, New York, Pennsylvania, Vermont, and Virginia (alternate procedure of § 99), which require certification but have no mandatory provisions for court appointment of examiners or a special commission to hear the case. Similar results are possible in two states (Illinois and Iowa) without mandatory certification.

[15] The possibility is explicitly recognized in the Illinois provision for "a hearing upon the petition and the certificates," cited note 21, Chart IV-A. Compare the certification procedures with provisions for judicial approval, discussed in Section III.C.2. supra.

[16] See "Examination Ordered by Court" columns, Chart IV-A.

[17] See note 3 supra.

[18] See "Examination Ordered by Court" columns, Chart IV-A.

[19] See note 4 supra.

Like certifying experts, examiners appointed by the court must most often be one or two physicians, although some statutes provide alternatively for physicians and/or psychologists to be appointed.[20] Special restrictions and qualifications are occasionally added to these statutory designations.[21] Instead of or in addition to specifying experts, several statutes provide for prehearing examinations to be conducted by diagnostic centers or other facilities or institutions, and temporary commitments may be used for this purpose.[22]

Pre-hearing examinations upon court order are perhaps superior to certification in difficult or contested cases because they assure impartial expert opinion. They may also prevent unnecessary judicial hearings; statutes in eight states expressly provide for dismissal of a case following an examination report contrary to the allegations of the petition.[23]

c.) Notice of Hearing

Although the great majority of the 47 judicial procedures provide for hearings,[24] they differ considerably in their provisions for advance notice of these hearings. No notice requirements are expressed for 14 procedures, whereas 22 procedures provide for notice to both the alleged retardate and other interested parties. Between these extremes are nine procedures which require only interested parties other than the prospective patient to be notified, and two which, conversely, provide notice only to the respondent.[25] Notice otherwise required for a prospective patient may be omitted in a few states if he is a minor,[26] and in several states if the court considers that notice would be "injurious" or, less often, "ineffective" or "without advantage" to him.[27] Interested parties most frequently entitled to notice are relatives of the respondent (especially parents and spouses), guardians and other custodians, and petitioners.[28] Fourteen states specify minimal permissible notice, which ranges from 24 hours to 15 days, but is most commonly three, five, or ten days.[29]

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[20] See "Examination Ordered by Court -- Examiners" column, Chart IV-A.

[21] See, e.g., the provisions cited notes 5, 8, Chart IV-A.

[22] See "Examination Ordered by Court -- Examiners" column, Chart IV-A; notes 23, 25, Chart IV-A.

[23] See "Examination Ordered by Court -- Dismissal After" column, Chart IV-A.

[24] See Section III.D.2. infra.

2. Hearing Procedures

Although five procedures make no specific provision for judicial hearing on a commitment petition,[30] hearings are clearly mandatory under 39 procedures in 37 jurisdictions, and optional in the remaining three states with commitment procedures.[31] In New York and South Carolina a hearing is available upon request,[32] and in New York and Pennsylvania a hearing may be ordered by the court on its own motion. When hearings are not held in these states, the procedures are essentially institutionalization by certification, and like other certification procedures, these three provide opportunities for post-admission judicial review.[33]

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[25] See "Notice of Hearing -- to Patient" and "--to Interested Parties" columns, Chart IV-A.

[26] The provisions of Kentucky, Vermont, and Wyoming are indicated in the "Notice of Hearing -- to Patient" column, Chart IV-A. The Vermont provision also excludes persons under guardianship from the notice requirement. See also the Massachusetts provision cited note 20, Chart IV-A.

Notice of commitment proceedings may be effected by other statutes or "Rules of Court" which provide for omission or substitution of service in cases where designated recipients are minors, incompetents, or institutionalized patients. For purposes of this report, however, statutes and rules outside the mental health codes have not been consulted.

[27] See note 20, Chart IV-A.

[28] See "Notice of Hearing -- to Interested Parties" column, Chart IV-A.

[29] See "Notice of Hearing -- Minimum Time" column, Chart IV-A. Notice of the hearing may be extended, in effect, by provisions for prior notice of "the commencement of proceedings." See note 6, Chart IV-A.

[30] Alabama, Florida, Georgia, Massachusetts (alternative procedure), and Oregon. See notes 1, 5, 6, Chart IV-B.

a.) Conduct of Hearing

In recognition of the special, civil nature of commitment proceedings, many statutes suspend or modify the traditional formalities of due process for such hearings. Although some of these provisions are ostensibly mandatory, they are usually phrased so as to leave their precise interpretation and implementation to the discretion of the trial court. The judge may be authorized or required to exclude from the hearing all persons "without legitimate interest" or "unnecessary to the conduct" of the proceedings.[34] Statutes may also require that the hearing be conducted "in as informal a manner as may be consistent with orderly procedure."[35] And technical rules of evidence may be relaxed to the extent that the court "shall receive all relevant and material evidence."[36]

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[31] See "Hearing" columns, Chart IV-B.

[32] Hearing may be demanded in New York by "any relative or near friend" in behalf of the alleged retardate. The South Carolina statutes do not specify parties who may make the request.

[33] Habeas corpus proceedings are, of course, available in all three states, and the New York and Pennsylvania statutes expand the writ to include inquiry into the patient's mental condition. New York and South Carolina provide specially for appellate *de novo* review and jury trial. See "Judicial Review -- Habeas Corpus" and "--Appeal" columns, Chart IV-C. Compare the discussion of certification procedures in Section III.C.3. *supra*.

[34] See "Conduct of Hearing -- Closed" column, Chart IV-B. See also "Place of Hearing -- Courtroom" column, Chart IV-B, for provisions for hearings to be held "in chambers."

The most frequent of these special statutory provisions are those which permit the hearing to be held outside the courtroom, or require it to be conducted "in a physical setting not likely to be injurious" to the prospective patient.[37] These provisions are closely related to others concerning the patient's presence at the hearing. Fifteen jurisdictions make the presence of the respondent mandatory; nineteen states provide for his presence upon his request and/or in the court's discretion.[38] Several states qualify these requirements or rights for cases in which it is determined, by judicial finding or expert certification, that the patient's presence would be "unsafe," "unwise," "improper," or "injurious" to him.[39] Although the latter provisions may be more relevant to commitment of the mentally ill, their approach also seems appropriate for the mentally retarded. It may be neither humane nor convenient to require the alleged retardate's presence in every case, but it seems unrealistic to rely exclusively upon his attendance on his own initiative. Preferable procedures are those which provide for determining the desirability of the patient's presence in each case, although his attendance is presumptively favored. The statutes may also make separate provision for the patient to be observed by the judge, the commission, or the appointed examiners, so that this necessity does not dictate the patient's presence for the actual hearing.[40]

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[35] See "Conduct of Hearing -- Informal" column, Chart IV-B.

[36] See "Conduct of Hearing -- Relaxed Rules of Evidence" column, Chart IV-B.

[37] See "Place of Hearing -- Discretionary" column, Chart IV-B.

[38] See "Presence of Patient" column, Chart IV-B.

[39] See note 11, Chart IV-B.

b.) Legal Counsel and Jury Trial

As noted in the previous section, some rights traditionally associated with judicial procedure may be so inappropriate for civil commitment proceedings that they are suspended or relaxed. Reverse considerations would seem to apply with respect to the right to be represented by legal counsel. Both the alleged criminal and the alleged retardate may be subject to a deprivation of liberty through enforced confinement, but the latter is more likely to require assistance in understanding judicial proceedings and in exercising procedural rights. However, only nine states require court appointment of counsel in all commitment cases in which the allegedly retarded person has none.[41] In five other states appointment of counsel or a guardian ad litem is expressly made discretionary, and a few states make such appointments mandatory if the respondent requests counsel, if he is indigent, or if he has not received notice of the hearing.[42] On the other hand, the statutes of 20 states explicitly recognize the alleged retardate's right to be represented at the hearing by retained counsel,[43] although this right presumably exists even in the absence of such statutory provisions. The mere right to retain counsel does not seem sufficient protection for respondents in these cases, since they are frequently minors and their mental competency is at least questionable.

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[40] *Cf.* note 6, Chart IV-B.

[41] The provisions of Alaska, Colorado, Idaho, Iowa, Kentucky, Maine, Tennessee, Virginia, and West Virginia are indicated in the "Legal Counsel -- Court Appointment if Patient not Represented" column, Chart IV-B. In two of these states, Colorado and Iowa, appointment is mandatory even if the patient is already represented by counsel.

[42] See "Legal Counsel -- Court Appointment if Patient not Represented" column, Chart IV-B.

[43] See "Legal Counsel -- Patient's Right to be Represented" column, Chart IV-B.

A right to a hearing before a lay jury is provided by statute in eight states.[44] In five, jury trial may be demanded by the patient or someone in his behalf, or may be ordered by the court on its own motion. In Kentucky, a jury is mandatory if the hearing involves issues of both institutionalization and competency. Some of the states authorize special juries composed of six persons for commitment cases.[45] In Illinois at least one of the six jurors must be a physician or a psychologist.

c.) Criteria and Commitment

Most statutes designate criteria for commitment only by requiring the judge, jury, or commission to find that the respondent is "mentally retarded," as that or a similar term is statutorily defined.[46] Of those jurisdictions which do provide criteria in addition to (or instead of) these definitions,[47] about half mention only factors which are often included in the definitions: institutionalization may be ordered if it is "in the best interest" or "for the welfare" of the person or the community. Other states' statutes require that the respondent be found either to be dangerous to himself or others, or to lack "sufficient insight or capacity to make responsible application" for institutionalization. The latter criterion is somewhat expanded by provisions in Maine and Tennessee which limit judicial commitments to cases in which "voluntary admittance cannot be accomplished," or in which the prospective patient "or his parent, guardian or person having lawful custody of him does not consent" to admission.[48] Similar in effect, perhaps, are the criteria of Georgia and New Mexico based upon inadequacy of the care or supervision being given to the alleged retardate. On the other hand, in four states the respondent is expressly given an option to apply for voluntary admission.

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[44] See "Jury Trial" columns, Chart IV-B. See also the rights to jury trial provided for appellate procedures, indicated in the "Judicial Review -- Appeal -- Jury Trial" column, Chart IV-C. This right may also be affected by guarantees contained in state constitutions, which are not considered in this report.

[45] See note 2, Chart IV-B.

[46] See note b, Chart IV-B.

[47] See "Special Criteria for Commitment" column, Chart IV-B.

All but one[49] of the judicial procedures provide for indeterminate commitments,[50] but in twelve states a prior temporary commitment is either discretionary or mandatory.[51] In fourteen jurisdictions it is possible that an order for indeterminate commitment also constitutes an adjudication of the patient's civil incompetency, although many of these statutes are not at all clear on this point.[52] It is mandatory in five states for the court which orders a patient to be institutionalized also to appoint a guardian for him, but two of these provisions apply only if the patient has an "estate."[53] In Michigan the committing court has discretion to appoint a temporary guardian. The statutes of six states (including Michigan and one state, Minnesota, with mandatory provision for judicial appointment) declare that a committed patient is automatically under the guardianship of a state agency or official or the superintendent of the admitting institution.[54] Thus, only ten states in any way provide the guardianship recommended by the Task Force on Law of the President's Panel on Mental Retardation:[55]

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[48] In states with mutliple institutionalization procedures, preferential criteria may also be established by administrative practices or regulations. See, e.g., the Wisconsin regulatory provision cited note 26, Chart IV-A.

[49] The exception is the Maryland procedure for juvenile court commitment of a minor for a determinate period not to exceed the patient's minority.

[50] See "Court Order -- Commitment -- Indeterminate" column, Chart IV-B.

[51] See "Court Order -- Commitment -- Temporary" column, Chart IV-B; notes 4, 9, 25, Chart IV-B.

[52] See "Court Order -- Adjudication" column, Chart IV-B; notes c, 7, Chart IV-B.

> *When a court orders* commitment of a person not already having a guardian, the order should include appointment of a guardian for the duration of the commitment. A staff member of the state protective agency might well serve in this role if relatives are not available.

3. Post-Hearing Procedures

a.) Institutional Admission

A patient may be committed to a state institution under all judicial procedures, and 19 states have procedures which apply as well to private institutions.[56] Actual admission to an institution is usually dependent upon approval of an authority of the individual institution or the state agency which supervises all institutions.[57] A few statutes purport to make admission mandatory for state institutions, but the requirement is "subject to the availability of suitable accommodations." The latter condition is explicitly mentioned in the statutes of 28 states, where it is most frequently applicable to public institutions.[58] In over a third of the states with commitment procedures, statutes or regulations provide for the patient to be examined at the institution either before or soon after his admission.[59]

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[53] See "Court Order -- Appointment of Guardian" column, Chart IV-B.

[54] See note 6, Chart IV-C.

[55] Report of the Task Force on Law, The President's Panel on Mental Retardation 30 (Washington, 1963).

[56] See "Commitment to -- Public Institution" and " -- Private Institution" columns, Chart IV-C.

[57] See "Admission -- Approval by -- " columns, Chart IV-C.

b.) Judicial Review

Twenty states specially provide for a patient or someone in his behalf to appeal the order for this commitment.[60] Half of these statutes provide for appellate trial de novo of the issue of institutionalization, and for seven of these procedures jury trial is either mandatory or available upon demand. Habeas corpus proceedings are, of course, available in every state to test the legality of the procedure used for commitment, and in 14 states the scope of this writ has been expanded by statute to permit judicial inquiry into the patient's present mental condition.[61] Unlike rights to appeal, which must be exercised within a certain time after the commitment order, habeas corpus remains available throughout the patient's commitment. Provisions for expanded habeas corpus proceedings are thus alternate procedures for judicial discharge.

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[58] See "Admission Criteria -- Available Accommodations" column, Chart IV-C.

[59] See "Admission Criteria -- Mental Examination" columns, Chart IV-C. See also the provisions for temporary commitments indicated in the "Court Order -- Commitment -- Temporary" column, Chart IV-B.

[60] See "Judicial Review -- Appeal" columns, Chart IV-C. The indicated number of jurisdictions is undoubtedly understated because it includes only provisions for appeal which are set forth or referred to within the context of the states' mental health codes.

[61] See "Judicial Review -- Habeas Corpus" columns, Chart IV-C. The first column includes statutory provisions for habeas corpus which, unless they have been judicially expanded, presumably retain the common law limitation that the writ only tests the legality of the original detention. Provisions for enlarged habeas corpus are indicated in the second column, "Review of Mental Condition."

4. Discharge Procedures

a.) Administrative Discharge

Committed patients may be administratively discharged in 39 states.[62] In seven it may be necessary for these discharges to be approved by the committing court, and in another 16 states the court must be notified of the discharges.[63] Superintendents or other authorities of individual institutions are usually authorized to grant discharges, but in some states this function is shared with or, more rarely, possessed only by the state agency with supervision over the institutions. Criteria specified for discharge are generally the reverse of commitment standards; release must be "for the welfare of the patient and the community," or the patient must be "no longer in need of" institutional care or involuntary detention. A few statutes indicate that discharge may be made for "the best interest of the institution," or when release is "necessary or expedient." In several states final discharge is expressly dependent upon the patient's completion of a year or more on conditional-release status, or upon the ability of the patient's family or community to provide continuing care and supervision for him.

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[62] See "Administrative Discharge" columns, Chart IV-D.

[63] See "Administrative Discharge -- Approval of Court" and "-- Reported to Court" columns, Chart IV-D.

b.) Judicial Discharge

Thirty-four jurisdictions provide one or more procedures for judicial discharge of institutionalized patients.[64] However, several of these procedures are specifically for restoration of "competency" or "sanity," and their applicability to and effect upon mentally retarded patients is not clear. Proceedings may usually be initiated by the patient or his relatives, guardian, or friend, and sometimes by "any person" or officials of either the institution or a state agency.[65] The court having jurisdiction and the proceedings and criteria used may be the same as or different from those specified in the statutes governing original commitments. Among the special provisions, most frequent are requirements for certification by institutional authorities or other experts,[66] and for notice to institutional officials and interested parties.[67] In order to prevent repetitious and unjustified petitions for discharge, thirteen jurisdictions restrict the frequency with which such petitions may be filed.[68] In eight states these restrictions apply to initial petitions filed sooner than six months after commitment, and subsequent petitions are limited in all thirteen jurisdictions, usually to one per year.

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[64] See "Judicial Discharge and Restoration" columns, Chart IV-D. See also the habeas corpus provisions discussed in Section III.D.3.b. supra. Like habeas corpus provisions, many of the statutory procedures for judicial discharge are also applicable to patients institutionalized voluntarily or upon certification in states which have multiple institutionalization procedures.

[65] See "Judicial Discharge and Restoration -- Petition by --" columns, Chart IV-D. Compare the recommendation for automatic, periodic judicial review discussed in Section IV-E infra.

[66] See "Judicial Discharge and Restoration -- Special Certification by --" column, Chart IV-D.

[67] See "Judicial Discharge and Restoration -- Special Proceedings and Criteria -- Notice of Hearing to --" column, Chart IV-D.

[68] See "Judicial Discharge and Restoration -- Frequency Restrictions" columns, Chart IV-D.

IV A. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- PRE-HEARING PROCEDURES

STATE AND STATUTE	Age Limits	PETITION BY			PETITION SUPPORTED BY		Court or Commission	EXAMINATION ORDERED BY COURT		NOTICE OF HEARING		
		Any Person	Official	Interested Party	Certification by	Other Evidence		Examiners	Dismissal After	To Patient	To Interested Parties	Minimum Time
AAMD DRAFT ACT (no provision)												
ALABAMA CODE(1959) Title 45 [n.1]	§236 over five			§239 relative,guardian, or other person interested	[n.2]		§239 if patient under 21,juvenile court (if any); otherwise probate court	tit. 13, §358 (discretionary for juvenile court) physician or physicians or approved mental examination				
ALASKA STAT.(1962) Title 47,ch.30 [n.3]			§070(a) physician,peace officer head of institution in which patient is hospitalized,or Dep't of Health & Welfare	§§070(a),340(8) guardian,spouse,parent, adult child,or next of kin [n.4]			§070 superior	§§070(c),340(3) one or more physicians [n.5]	§070 (e)	§070(f) [n.6]	§070(f) applicant,guardian,and other interested parties [n.4,6]	
ARIZONA REV.STAT.(1956) Title 8 [n.1]	§421 (A) minor [n.7]		§422(B) county board of supervisors (to Colony Board) §423(A) Children's Colony Board(to court)			§422	§423(A) superior	§423(A)(2) two physicians [n.8]			§423(A)(4) parent,relative,or guardian	§423(a)(4) fifteen days
ARKANSAS STAT.(1965 Supp.) Title 59 [n.1]	[n.9]		§305(c) Children's Colony Board (to court) [n.10]	§304(a) parent or guardian (to Colony Board) [n.10]	§305 two physicians; (optional)one or more psychologists, psychiatrists,or other physicians	§§304, 305(c)	§305(c) probate	§305(c) (optional)not exceeding two physicians [n.8]				
CALIFORNIA WELFARE & INSTITUTIONS CODE(1965 Supp.) [n.11]		§5592 (d) designated by court	§5592(b),(c),(e) district attorney or probation officer; Youth Authority;or Director of Corrections	§5592(a) parent,guardian,or person charged with support			§5592 superior	§5597 physician and clinical psychologist,or two physicians,or two psychologists [n.5]		§5594	§5594 if petitioner is an official,to parent,guardian,or person charged with support	§5594 for patient, due notice; for interested parties,notice court deems proper
COLORADO REV.STAT.(1965 Supp.) Ch.71,Art.1 [n.12]		§5(1)			§5(1) (optional)physician		§5(1) district or probate	ch.124,art.3,§12(2),(3) (optional for child) children's diagnostic center [n.13]		§6(2)	§§5(1),8(1) guardian ad litem	§§5(1),6(2), 8(1) for patient, five days; for guardian ad litem,two days
CONNECTICUT GEN.STAT.(1965 Supp.) Title 17			§172d welfare commissioner, selectmen or welfare dep't of town	§172d relative or guardian	§172d psychologist [n.14]		§§172b, 172d probate	§172d physician				
DELAWARE (no provision)												
FLORIDA STAT.(1965 Supp.) Ch.393 [n.1]		§11 three persons [n.15]	[n.15]		[n.15]	§11	§11 county judge	[n.13]		[n.16]	[n.16]	

JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- PRE-HEARING PROCEDURES

STATE AND STATUTE	Age Limits	PETITION BY			PETITION SUPPORTED BY		Court or Commission	EXAMINATION ORDERED BY COURT		NOTICE OF HEARING		
		Any Person	Official	Interested Party	Certification by	Other Evidence		Examiners	Dismissal After	To Patient	To Interested Parties	Minimum Time
GEORGIA CODE(1965 Supp.) Title 88 [n.1]		§2507					§2507(a) court of ordinary	[n.13]				
HAWAII REV.LAWS(1965 Supp.) Ch.82 [n.1]			§6 agent of child placing organization or of gov't dep't or bureau	§6 adult relative, guardian, or custodian	§6 examining committee of physician, clinical psychologist, and social worker		§6 circuit or (for minor in first circuit) juvenile			§7	§7 if not petitioner, parent, guardian, or custodian	§7 ten days
IDAHO CODE(1965 Supp.) Title 66			§329(a) physician; officer of municipality, county, or state; head of public or private hospital in which patient may be	§329(a) friend, relative, spouse, or guardian	§317(a),329(a) psychiatrist, clinical psychologist, neurologist, physician or surgeon [n.17,18]		§328 probate	§329(b),(j) at least on psychiatrist, clinical psychologist, neurologist, physician or surgeon [n.5,19]	§329 (b)	§329(d) [n.20]	§329(d) guardian, spouse, parents, nearest relative, or friend	
ILLINOIS STAT.(1965) Ch.91-1/2		§8-1 citizen			[n.2,21]	§8-1	§§2-1,8-1 circuit	§8-2 (optional) medical examiners		§8-5 [n.6]	§8-5 spouse, and other persons as court deems necessary or desirable [n.6]	§8-5 reasonable notice
INDIANA STAT. (Burns 1964; 1966 Supp.) Title 22 [n.3,22]		§1907 citizen			§1907 physician	§1907	§1907 circuit	§1907 two medical examiners	§1907		§1907 parent, guardian or other custodian	§1907 five days
		§1212 resident citizen		§1212 if no resident willing, by nonresident next of kin	§1212 physician [n.23]	§§1212, 1213, 1215 [n.23]	§1209 circuit or superior; for juvenile, juvenile court (if any)	§1215 (for regular commitment) two physicians [n.5]		§1213 or §§1216, 1219		
IOWA CODE(1965 Supp.) Ch.222		§16 citizen		§16 relative or guardian	[n.2]	§17	§16 with permission, district, superior, or municipal	[n.13]		§§19,20	§§19,20 if not before court, parents, person with whom living, persons giving care and attention, and guardian	
KANSAS (no provision)												
KENTUCKY REV.STAT.(1963) Ch.202		§030 (1) resident [n.24]				§040 (2)	§020 circuit, or if not in session, circuit judge or county court	§100,110 two physicians or physician and clinical psychologist [n.5,25]	§115 (2) [n.25]	§§060(1) 165 if of legal age	§§040(2),060(1) if named in petition; parents or guardian; spouse; custodian or near relative	§§060(1),07 for patient, three days
			§030(2) if patient hospitalized, two staff physicians		§030(2) petitioners							
LOUISIANA REV.STAT.(1950; 1965 Supp.) Title 28 [n.26]		§53(A)			§§52,53(A) coroner and other physician		§§53(A),62 civil district §§53(D),60 for child, juvenile	§53(B) (optional) judge or limited commitment for observation [n.13]				

IV-A. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- PRE-HEARING PROCEDURES

STATE AND STATUTE	Age Limits	PETITION BY			PETITION SUPPORTED BY		Court or Commission	EXAMINATION ORDERED BY COURT		NOTICE OF HEARING		
		Any Person	Official	Interested Party	Certification by	Other Evidence		Examiners	Dismiss After	To Patient	To Interested Parties	Minimum Time
MAINE REV.STAT.(1964; 1966 Supp.) Title 34			§2152(3) physician,health or welfare officer, or head of institution in which patient may be	§2152(3) friend	§2152(3) psychiatrist or physician [n.18]		§2152(3) judge of probate	§2152(3) 2 physicians,one a psychiatrist;or physician and psychologist	§2152 (3)	§2152(3) [n.6,20]	§2152(3) applicant;guardian;spouse, parent,adult child,next of kin or friend;others as court may direct [n.6]	§2152(3) 72 hours
MARYLAND CODE(1957;1965 Supp.) Art. 26 [n.27,28]	§§52 (c), (g);53 under 18						§§51,53 circuit court sitting as juvenile court	§63 (optional)physician, psychiatrist,or psychologist				
MASSACHUSETTS GEN.LAWS(1965) Ch.123 [n.1,29]			[n.30]		§§53,66 physician [n.17,31]	[n.32]	§66 probate or district	§99 (optional)medical staff member of state hospital		§66 [n.20]		
					§53,66A physician [n.17]	[n.32]	§66A probate					
MICHIGAN STAT.ANN.(1965 Supp.) Title 14 [n.33]	[n.34]	§811 person judge determines proper	§811 sheriff,township supervisor,county agent,or peace officer	§811 parent,spouse,sibling, or child,if of legal age,or guardian		§811	§811 probate	§§810,811 2 physicians [n.25,35]		§811 [n.20]	§811 unless dispensed with:official petitioner;parents, spouse,and next of kin,if of full age;other relatives as ordered by court;and person with whom patient residing	§811 24 hours
MINNESOTA STAT.(1965 Supp.) Ch.525		§751 (1) resident [n.26]	ch.252,§11 commissioner of public welfare [n.36]	§751(1) relative [n.36]	[n.37]	[n.37]	§§751(1),763 probate(judge or if unable, court commissioner)	§752(1) two doctors of medicine and (optional)person skilled in ascertainment of mental deficiency [n.25]			§752(2) commissioner of public welfare,and other persons as court directs [n.38]	§752(2) ten days [n.39]
MISSISSIPPI CODE(1952)		§6909-03 citizen		§6909-03 relative			§§6909-03,05, 07 chancery (clerk)	[n.13]			§6909-03 if not petitioner,nearest of kin or guardian [n.6]	
MISSOURI (no provision) [n.1,40]												
MONTANA REV.CODES(1965) Title 80 [n.1]		§2305 other than parent or guardian				[n.41]	§2305 district	§2305 two physicians,or physician and psychologist acceptable to dep't of institutions			§2305 parents or guardians and other interested parties	
NEBRASKA REV.STAT.(1965 Supp.) Ch.83		§220 (2) citizen	§220(2) county commissioner, county attorney,health officer,school official, probation or parole officer or superintendent or manager of institution having patient in charge	§220(2) spouse,parent,guardian, or person in loco parentis	§221 physician [n.42]	§221	§220(2);ch. 43,§202 district, county,or juvenile	[n.42]		[n.43]	§222 parties in interest	

IV-A. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- PRE-HEARING PROCEDURES

STATE AND STATUTE	PETITION BY				PETITION SUPPORTED BY		Court or Commission	EXAMINATION ORDERED BY COURT		NOTICE OF HEARING		
	Age Limits	Any Person	Official	Interested Party	Certification By	Other Evidence		Examiners	Dismissal After	To Patient	To Interested Parties	Minimum Time
NEVADA REV.STAT.(1963) Ch.62 [n.1]	§§020(1)(c) 040(1)(c) under 18	§130(1)				§130(3)	§§030,040(1)(c) juvenile	§240(1) (optional) physician, psychiatrist, psychologist, or other qualified person			§140(1) custodian or parent and/or guardian	§150 48 hours
NEW HAMPSHIRE REV.STAT.(1964) Ch.171 [n.1]			[n.44]	[n.44]			§13 probate	§13 mental hygiene clinic, or agency approved by clinic [n.45]				
NEW JERSEY (no provision)												
NEW MEXICO STAT.(1965 Supp.) Ch.34,art.3		§6(A) over 21		[n.46]		§6(A)	§6(A) district	§6(B) one or more physicians, and other experts as court deems proper §6,2(B),(C) (optional) hospital evaluation board		§6(B) (citation) [n.20]	§6(B) (optional citation) parents, guardians, or custodians	
NEW YORK MENTAL HYGIENE LAW (McKinney 1966 Supp.) [n.47]			§124(2) charity or welfare officer, or N.Y.C. commissioner of hospitals [n.47]	§124(2) person with whom residing, parent, spouse, sibling, child, nearest relative or friend, or committee of such persons	§§2(18),(19);121(2),(3);124(1),(2) two physicians or physician and psychologist		§124(1) city or county court of record, family court, or supreme court			[n.6,20,43]	§124(5) interested parties and others as judge names [n.6]	[n.6]
NORTH CAROLINA (no provision)												
NORTH DAKOTA CENTURY CODE (1960;1965 Supp.) Title 25 [n.48]			§03-11(1) physician, police officer, state's attorney, health or welfare officer, or head of institution in which patient may be	§03-11(1) friend, relative, spouse, or guardian	§03-11(1) physician, unless waived by county judge [n.18]		§§02-11,03-11 county mental health board [n.49]	§03-11(3) at least one physician	§03-11(5)	§03-11(2),(5) [n.6,20]	§03-11(2),(5) guardian and spouse, parent, or nearest relative or friend [n.6]	
OHIO REV.CODE(1965 Supp.) Ch.5122 [n.48]		§11	§13 county welfare dep't, social worker or other investigator appointed by court [n.50]		§11 (optional) physician [n.18]	§13 (optional) investigation report [n.50]	§11 probate	§14 (optional if certification or hospital report filed; mandatory otherwise) at least one physician		§12(A) [n.20, 51]	§12(B)-(F) guardian; spouse; petitioner; one person designated by patient, patient's attorney, or adult next of kin; others as court determines [n.51]	
OKLAHOMA (no provision)												

IV-A. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- PRE-HEARING PROCEDURES

STATE AND STATUTE	Age Limits	PETITION BY			PETITION SUPPORTED BY		Court or Commission	EXAMINATION ORDERED BY COURT		NOTICE OF HEARING		
		Any Person	Official	Interested Party	Certification By	Other Evidence		Examiners	Dismissal After	To Patient	To Interested Parties	Minimum Time
OREGON REV.STAT.(1965) Ch.427 [n.1]	[n.52]	§015 citizen					§015 probate	§§025,045 facility or institution approved by Mental Health Division, or state center	§059 (1)			
PENNSYLVANIA STAT.ANN.(1954; 1965 Supp.) Title 50		§1201 (b)(3)		§1201(b)(3) parent or guardian	§§1072(13),1182 (a),1201(d),(e) physician; including psychological tests [n.31]		§1201(a)(5) a court of county			[n.43]	§1203(a) parties in interest	
RHODE ISLAND GEN.LAWS(1956) Title 26,ch.5 [n.1]							§§10,14,15 if under 18, juvenile; if 18 or older, district	[n.53]				
SOUTH CAROLINA CODE OF LAWS (1962;1965 Supp.) Title 32 [n.1]			§§982,1083,1095.9 superintendent of institution in which patient may be	§§982,1083,1095.9 friend, relative, or guardian	§§982,1083 physician [n.18]		§§982,1083, 1095.9 probate or other court having jurisdiction	§§911(6),984,1085 two physicians [n.5]	§§985, 1086	§§983, 985,1084, 1086 [n.6,20, 54]	§§983,985,1084,1086 guardian and parents, nearest relative or friend [n.6,54]	
SOUTH DAKOTA CODE(1960 Supp.) Title 30 [n.1,48,55]							§§0404,0409 county subcommission for mentally retarded [n.49,56]	§§0107,0409 physician member of subcommission [n.56]		§0107	§0107 relative with whom residing, or relative and person with whom residing or custodian	§0107 five days [n.57]
TENNESSEE CODE(1966 Supp.) Title 33			§502 county health or welfare officer or superintendent of education	§501(3) interested adult			§§501(3), 503, 504 county(judge or chairman)	§503 two physicians or physician and psychologist		[n.58]	§504 parent, nearest of kin guardian or custodian [n.58]	§504 three days
TEXAS REV.CIVIL.STAT. (Vernons 1966 Supp.) Art.3871b		§6					§3 art.1970a-1 (1) county or probate	§§4,7,13(1) diagnostic center maintained or approved by Dep't of Mental Health & Mental Retardation			§6 parents, spouse, guardian, or nearest relative; if none, appointed attorney	
UTAH CODE (1961) Title 64,ch.8 [n.1]		§16					§16 district	§§17,18,19 at least one physician				
VERMONT STAT.ANN.(1959) Title 18	[n.59]		§2746(a) commissioner of social welfare or selectmen of town	§2746(a) parent or guardian	§2746(b) two physicians	§2747	§2746(a) probate			§2747 unless minor or has guardian	§2747 petitioner, comm'r. of mental health, state's attorney; if patient is minor or has guardian, to parent, guardian or custodian	§2747 ten days

IV-A. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- PRE-HEARING PROCEDURE

STATE AND STATUTE	PETITION BY				PETITION SUPPORTED BY		Court or Commission	EXAMINATION ORDERED BY COURT		NOTICE OF HEARING		
	Age Limits	Any Person	Official	Interested Party	Certification By	Other Evidence		Examiners	Dismissal After	To Patient	To Interested Parties	Minimum Time
VIRGINIA CODE(1953;1966 Supp.) Title 37		§61					§§1.1(7),61,61.2 circuit,corporation,county,municipal,juvenile or domestic relations judge;civil and police justice;or special justice	[n.13]				
		§99			§99 physician [n.60]		§99 circuit,corporation,county or municipal judge					
WASHINGTON (no provision) [n.61]												
WEST VIRGINIA CODE(1961;1965 Supp.)			§2661 physician,health officer,public welfare caseworker,or head of institution in which patient may be	§2661 parent,guardian,spouse, adult next of kin or friend	§2661 physician [n.18]		§§2653,2661 county mental health commission [n.49]	§2661 two physicians		§2661 [n.6]	§2661 applicant;spouse,parent, guardian or adult next of kin [n.6]	§2661 five days
WISCONSIN STAT.(1965) Ch.51 [n.48]		§01(1)(a) adult residents [n.62]	§01(1)(a) sheriff or police,welfare or health officer [n.62]	§01(1)(a) person with whom residing,parent,child,spouse, brother,sister or friend [n.62]			§01(1) county;if not available,any court of record;if patient under 18,juvenile	§§01(2)(a),23 two physicians or physician and clinical psychologist [n.5]		§02(1)(a) [n.20]	§02(1)(a) (optional)other persons as court deems advisable [n.63]	
			§05(4) superintendent of hospital	ch.58, §05(2) for private institution by guardian							§02(1)(b) if patient is veteran, to state dep't of veterans' affairs	
WYOMING STAT.(1957) Title 9		§444 citizen	§444 county and prosecuting attorney	§444 relative or guardian	§446 physician	§446	§§444,450; tit.5,§71(1) district judge,or if absent,commissioner)	§447 physician and psychologist [n.5]		§448 if not minor [n.51]	§448 applicant;if patient is minor, parent, guardian,or guardian ad litem [n.51]	§448 three days
DISTRICT OF COLUMBIA CODE(1966 Supp. V) Title 21	§1102 not over forty-five	§1103(a) citizen		§1103(a) guardian or relative	[n.2]	§1103(b)	§1103(a) U.S.District	§1105 two physicians [n.5]		[n.58]	§§1103,1104 persons charged with supervision,care,or support of patient;parents or guardians [n.58]	

Chart IV-A. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED --PRE-HEARING PROCEDURES

FOOTNOTES

1. In addition to the charted procedure, it may also be possible for mentally retarded persons to be committed under a procedure for the mentally ill because the terminology is broad enough to include them -- Alabama, §§208-210; Arizona, tit. 36, §§501, 505, 506, 509-515 (1965 Supp.); Arkansas, §101 (1947); Florida, ch. 394, §22 (1960, 1965 Supp.); Georgia, §§501(a), 505, 506; Hawaii, ch. 81, §§19-21; Massachusetts, §§1, 50-55; Missouri, REV. STAT. ch. 202, §§780(5), 807 (1962)(no charted procedure); Montana, tit. 38, §§201-208, 401-405 (1947); Nevada, ch. 433, §§ 200-230 (1965); New Hampshire, ch. 135, §§19-21; Oregon, ch. 426, §§060-130; Rhode Island, ch. 2, §§8-13; South Carolina, §§911(1), 958-965; Utah, ch. 7, §§28(a), 36 (1961, 1965 Supp.).

2. A certificate need not accompany the petition, but: the "judge shall examine three persons, one of whom must be a practicing physician, who are acquainted with the person sought to be committed, and with the condition of such person..." -- Alabama, §239; the petition must state "the names of the witnesses by which the facts alleged may be proved, at least one of which witnesses having personal knowledge of the case shall be...a physician or psychologist" -- Illinois, §8-1; the petition must state whether the prospective patient "has been examined by a qualified physician" -- Iowa, §17(6); D.C., §1103(b) -- and "the name and address of a qualified physician, if any is known to the petitioner, having personal knowledge of the case" -- D.C., §1103(b).

3. The charted procedure for the mentally ill is also applicable to the mentally retarded because mental retardation is included in the definition of "mental illness" -- Alaska, §340(10); Indiana, §§1201(1),(2), 1306(1).

4. "Interested party" is defined as "an interested, responsible adult including the legal guardian, spouse, parent, adult children, or next of kin..." Alaska, §340(8).

5. An examiner appointed by the court must be: a "designated examiner" who is a licensed physician or person designated by the state health agency as specially qualified in the diagnosis of mental or related illness -- Alaska, Idaho, South Carolina; "a physician who has made special study of mental deficiency and is qualified as a medical examiner...[or] a clinical psychologist" -- California.

   "If, in the opinion of the judge it is practicable, at least one of the examining physicians shall be a qualified psychiatrist" -- Indiana; "where possible, the physicians or physician selected shall have made a special study of mental deficiency and mental disease" -- Kentucky; one of the appointed physicians, "if available, shall be a physician with special training in psychiatry" -- Wisconsin; "such physician should be a specialist in mental cases if possible [and] the psychologist shall be the state director of special education, the superintendent of the training school, or other person designated by either of these two as competent" -- Wyoming; at least one of the appointed physicians must be "skilled in the diagnosis and treatment of mental diseases" -- D.C.

6. In addition to the charted provision for notice of the hearing, or instead of such a provision, there is a provision for notice of the receipt of the petition or the commencement of proceedings -- Alaska, §070(b); Illinois, §8-3; Maine, §2152(3); Mississippi, §6909-03; New York, §124(3); North Dakota, §03-11(2); South Carolina, §§983, 1084; West Virginia, § 2661.

7. The charted procedure applies only to the commitment of an "indigent" child, i.e., a minor "whose estate, parent, relative or guardian is unable to bear the full cost of maintaining such child at the colony" -- Arizona, §401(3).

8. The examiners must "use standard mental and psychological tests and physical examinations" -- Arizona, §421(B); Arkansas, §303(a)(3).

9. The statutes refer to "mentally defective children," but §301 provides that "child or children means mentally deficient persons without regard to chronological age" -- Arkansas.

10. Upon petition by a parent or guardian, the Children's Colony Board not only determines the availability of facilities and the eligibility of the patient, but also selects either voluntary admission or judicial commitment as the appropriate hospitalization procedure -- Arkansas.

11. In addition to the charted procedure for commitment to "state hospitals for the mentally retarded," §6300 authorizes County Psychopathic Hospitals to receive "mentally deficient or retarded" persons., and §6302 provides that "the superintendent or person in charge of the county psychopathic hospital may receive...any person...(a) who has been placed therein pursuant to a court order or court commitment..." There is no special statutory procedure, however, for commitment to these hospitals -- California.

12. In addition to the charted procedure, §4 provides for "short term involuntary hospitalization" which may not exceed six months, and which is accomplished "without adjudication," i.e., without a court order affecting competency. The latter procedure is not charted because it refers almost exclusively to cases of "mental illness," but it is possible for "mentally deficient" persons to be hospitalized under §4 -- Colorado.

13. Experts appointed by the court serve not only as examiners but as members of a special commission to hear the case. See "Hearing Held Before Special Commission or Referee" column, Chart IV-B -- Colorado, Florida, Georgia, Iowa, Louisiana, Mississippi, Virginia.

14. Psychological certification is required only if the prospective patient "has the physical and mental capacity for such evaluation" -- Connecticut.

15. One of the petitioners must be a physician -- Florida.

16. It is not clear whether the provision for notice of ch. 394, §22(4), is incorporated in the charted procedure of ch. 393, §11, which provides for the county judge to "appoint a commission as is appointed to examine persons alleged to be insane..." -- Florida.

17. Certification is: by a "designated examiner" who is a "licensed physician or person designated by the state board of health as specially qualified by training or experience in the diagnosis of mental or related illness" -- Idaho; by a qualified physician whose "standing, character and professional knowledge of mental illness are satisfactory to the judge" -- Massachusetts.

18. Instead of the certificate of an examiner, the petition may be accompanied by a written statement by the petitioner that the prospective patient has refused or is unable to submit to examination -- Idaho, Maine, North Dakota, Ohio, South Carolina, West Virginia.

19. If the prospective patient refused to submit to examination prior to filing of the petition, the court orders examination by "not less than two" examiners -- Idaho.

20. Notice to the prospective patient may be omitted: if the court "has reason to believe that notice would be likely to be injurious" to him -- Idaho, Maine, North Dakota, Ohio, South Carolina; if he is "present at the time of the hearing, or the application is made by someone legally entitled to his custody" -- Massachusetts; or the court "may direct substituted service to be made upon some person to be designated by it" -- Michigan; if the court does not deem it "proper that such person appear before the court at the time fixed" -- New Mexico (citation); if the judge is satisfied that notice "would be ineffective or detrimental to such person," and notice must be omitted if the court-appointed examiners certify that notice "would in their opinion be detrimental to such person" -- New York; "if it appears to the satisfaction of the court that the notice would be injurious or without advantage to the patient" -- Wisconsin.

    If personal notice to the prospective patient is omitted, a guardian ad litem must be appointed to receive notice on his behalf and represent him throughout the proceedings -- Michigan, Ohio.

    If notice to the prospective patient is omitted and he refuses examination by the court-appointed examiners, he is then notified and examination ordered -- Maine, North Dakota.

21. Although certificates are not required to be filed with the petition, if there is neither jury trial nor trial by commission, "the court shall proceed to a hearing upon the petition and the certificates of... two physicians or one physician and one psychologist..." -- Illinois, §8-8.

22. The first charted procedure of ch. 19 is for commitment of "all feebleminded persons" to either of the State Hospitals and Training Centers. However, the statutes still contain some prior special provisions of ch. 17, 18 for commitment to the individual institutions. In a few instances where these provisions supplement those of ch. 19, they are tabulated in the charts, but redundant or inconsistent provisions are not so noted.

It may be, however, that the procedure of ch. 19 has itself been superseded by the second charted procedure of ch. 12 for the commitment of "mentally ill" (including "mentally deficient") persons to any "psychiatric hospital."

In addition to the charted procedures, §1232(b) makes special provision for temporary commitment to the Carter Memorial Hospital -- Indiana.

23. "As soon as practicable after the filing of such allegations [of the petitioner] and statements [of the physician], the judge of the court shall consult with the petitioner and the attending physician to determine the extent of the illness and the most realistic treatment plan" (§1213). The court then decides that "the best interests of the patient will be served" by either temporary or regular commitment, and proceeds according to §1213 or §§1215-1219, respectively -- Indiana.

24. The resident's petition "may request: (a) That the defendant be sent to a hospital for observation, care and treatment of his condition; or (b) That he be adjudged incompetent; or (c) Both" -- Kentucky.

25. In addition to examiners appointed by the court, there is provision for an optional, temporary commitment for examination, observation and treatment prior to the hearing: if the examiners so recommend (not to exceed thirty-five days) -- Kentucky, §120; if the prospective patient or his attorney so demands (not to exceed 60 or 90 days) -- Michigan, §§811, 997(2); if the court determines that the best interest of the patient, his family, or the public is thereby served -- Minnesota, §751(2).

26. It is not entirely clear that the charted procedure applies to the mentally retarded. Section 53 merely provides that a judge "may commit to an institution any patient within his jurisdiction..." The procedure is charted here because of the inclusion of a "mentally defective" person in the definition of "patient" [§2(7)], and the inclusion of "places for the care of mental defectives" in the definition of "institution" [§2(8)]. See also §50(3) -- Louisiana.

27. In addition to the charted procedure, see art. 16, §144: "The court [of equity] may, on the application of any trustee of a person non compos mentis, and receiving proof that it is necessary and proper to confine such person, direct such trustee to send the person under his charge to any hospital in the vicinity of Baltimore, provided he can be there received, to remain until the further order of the court" -- Maryland.

28. According to §71 (1965 Supp.), the charted procedure is not applicable in "the City of Baltimore, or Montgomery County." However, a similar procedure is provided for Montgomery County [art. 26, §§76(c), 78(a)], and may also be available for the city of Baltimore [see art. 26, §109(a)(69); art. 42, §22] -- Maryland.

29. In Cahalan v. Dep't of Mental Health, 304 Mass. 360, 23 N.E.2d 918 (1939), the court refused to express an opinion as to the relation between §66 and §66A. The former provides for commitment to a state school; the latter, for commitment "to the custody or supervision" of the Department of Mental Health. Both are charted -- Massachusetts.

30. No petitioners are specified, but §23 provides that "if the department [of Mental Health] has reason to believe that...[a] feeble minded person who is a proper subject for treatment or custody in an institution, is confined in an infirmary or other place at the public charge or otherwise, it shall cause application to be made to a judge for the commitment of such person to an institution" -- Massachusetts.

31. "...the physician's examination of the alleged feeble minded person shall have occurred within ten days of the signing and making oath to the certificate, which shall bear date not more than twenty days prior to the commitment of such person" -- Massachusetts; "the court shall not entertain any such...certificate executed more than two weeks prior to its presentation" -- Pennsylvania.

32. The "approval of the department [of Mental Health] shall be filed with the application" for commitment by a District Court under §66 or by a Probate Court under §66A -- Massachusetts.

33. In addition to the charted procedure, there are similar procedures for judicial commitment: to a state institution of an inmate of "the boys' vocational school, the girls' training school, the Michigan children's institute, or any other charitable institution supported by the state," upon certification by the superintendent (§821); and to a private institution of a patient received therein, upon application of an officer of the institution (§822). Section 849 provides for the admission of "feeble-minded" persons to the Wayne County institution under the same procedures as are applicable to state institutions, and §872 provides similarly for other county institutions -- Michigan.

34. "...no feeble-minded woman above the age of forty-eight (48) years, nor any feeble-minded man whose condition is due to senility shall be admitted to the Michigan home and training school unless such admission is approved by the state hospital commission" -- Michigan, §845.

35. "If such physicians do not agree, the court may appoint a third reputable physician..." -- Michigan.

36. For circumstances in which petitions are ordinarily filed by parents or relatives, a county social worker, or others, see MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. III, §II.A, at 11; ch. III, §IV.B.4, at 15-17 (1959) -- Minnesota.

37. For medical, psychological and psychiatric reports and school or employment records which must accompany the petition, see MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. III, §IV.A.3.b, at 14 (1959). See also id. ch. IX, at 76-82 -- Minnesota.

38. See MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY Ch. III, §III.A.1, at 12 (1959): "In the case of a child, the court sends notice to the family or guardian." Cf. note 18, Chart IV-B.

39. For circumstances in which the Commissioner of Public Welfare may waive the ten days' notice, see MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. III, §III.B, at 12, 13 (1959).

40. The statutes do not provide a procedure for judicial commitment of "mentally deficient" persons. But see MO. REV. STAT. ch. 202, §595 (1959): "The division of mental diseases...shall receive...in a state school and hospital any mentally deficient person whose admission is applied for under any of the following procedures: ...(2) Institutionalization on application of a court of record..." See also ch. 202, §655; ch. 211, §201(2); OP. ATT'Y GEN. 83 (Oct. 14, 1960) -- Missouri.

41. "The county department of public welfare shall prepare a social summary of the person for the use of the court" -- Montana, §2305.

42. "In addition [to the medical certificate], the court shall have a report as to the mental capacity of the person. Such report shall be made to the court in writing by some person who is qualified by training and experience to give tests and examinations as to mental capacity and shall indicate that an examination or test as to mental capacity has been given before a final court order is entered" -- Nebraska, §221.

43. The prospective patient presumably receives notice as a "party in interest" -- Nebraska, §222; New York, §124(5); Pennsylvania, §1203(a).

44. Petitioners are not specified by statute. But see REGS. OF LACONIA STATE SCHOOL §6F-1: "Petition is made by the proper person, i.e., a parent, guardian, a selectman, or a social worker, to a probate court" -- New Hampshire.

45. Cf. REGS. OF LACONIA STATE SCHOOL §6F-2: "The appropriate register of probate notifies the Child Guidance Clinic, or, in the case of an adult, the State Hospital, of such petition. In either case, the appropriate agent is requested either to examine the individual or to review the findings of another qualified agency" -- New Hampshire.

46. "Mental defectives who are assured of adequate care and supervision and who are not a public menace are excluded from the involuntary commitment provisions...Provided however, such person[s] may upon petition of their parents or guardians be committed to the Los Lunas Hospital and Training Schools if they are otherwise eligible" -- New Mexico, §6(B).

47. In addition to the charted procedure, see the provision of §24(3): "The commissioner [of Mental Hygiene] and the health officer of the city, town or village, and the director of community mental health services of the city, county, part-county or joint counties, where any...mentally disabled person may be, or in the city of New York the commissioner of hospitals or in the city of Albany the commissioner of public welfare, may inquire into the manner in which any such person is cared for an maintained. If, in the judgment of such commissioner, health officer of director, as the case may be, such mentally disabled person is not properly or suitably cared for and maintained, he may require those legally responsible...to provide a suitable place for the care of such mentally disabled person or may cause such mentally disabled person to be admitted to a hospital or institution..." -- New York.

48. The charted procedure for the mentally ill is specifically made applicable to the mentally retarded -- North Dakota, §04-05; Ohio, ch. 5125, §25; South Dakota, §0409.

49. The commission with jurisdiction over the petition is composed of: the County Judge, a physician, and an attorney (two members constitute a quorum) -- North Dakota; the County Judge, the State's Attorney, the County Director of Public Welfare, the County Superintendent of Schools, and a physician (three members constitute a quorum) -- South Dakota; a member of the County Court, the prosecuting attorney and/or his designated assistant, and the clerk of the County Court and/or his designated deputy (two members from different offices constitute a quorum) -- West Virginia.

50. Upon receipt of an affidavit under §11 or of "information that the probate court considers reliable," the court may order an investigation "by the county welfare department or by a competent social worker or other investigator appointed by the probate court. Such investigation shall cover the character, family relationships, past conduct, whether or not the [proposed patient]...is likely to injure himself or others if allowed to remain at liberty, and other pertinent factors.... If the social worker or investigator has reason to believe that an individual investigated is a [mentally retarded]...person subject to hospitalization, such social worker or investigator may file an affidavit pursuant to [§11]" -- Ohio.

51. "All persons entitled to notice...may waive such notice..." -- Ohio, §12; "notice may be waived by written consent of all parties required to be notified..." -- Wyoming, §448.

52. FAIRVIEW HOSPITAL & TRAINING CENTER: STANDARD POLICY INSTRUCTION No. 126 (Admission Policy) §3.1 (Feb. 15, 1966): "Children under 5 years of age should not be admitted except under unusual circumstances" -- Oregon.

53. The prospective patient must be brought "before such district or juvenile court for examination" (§10). Commitment is ordered "on such examination and upon the testimony of two (2) practicing physicians in good standing, that such person is in need of restraint" (§12) -- Rhode Island.

54. The court must "give notice of a hearing, if a hearing is requested" (§§985, 1086). The recipients of this notice are not specified, but they are presumably the same parties who receive notice of the commencement of proceedings under §§983, 1084 -- South Carolina.

55. In addition to the charted procedure, §0606 (1939), provides that "when any person...is found...without a legal guardian, such person may be committed to the custody of the Superintendent of the State School and Home for the Feeble-minded by the county judge, on the complaint of the state's attorney... When a person is committed as in this section provided, the Superintendent of the State School and Home for the Feeble-minded shall have the legal custody of such person with all the rights of a guardian of the person..."

An alternate procedure may also be indicated by tit. 43, §0505(1939), which provides for a mentally retarded child to be reported by the Division of Child Welfare to "the proper county commission," which may then "institute the proper proceedings before the county court...to have such child committed to the State School..." -- South Dakota.

56. "Before final findings are agreed to, upon request of the person reported to be [mentally retarded] or any other person interested in such case or upon the [subcommission's] own motion it may appoint a regularly practicing physician of the county to act with the [subcommission] in any case in which there may arise any doubt in the minds of the [subcommission] or the persons interested in such case..." -- South Dakota.

57. "...the time within which such notice is required to be served, may be waived by the chairman or acting chairman of the [subcommission] whenever it shall appear from a certified statement made by the County physician or any other reputable licensed physician, that it would be injurious to the health or physical condition of the person to delay commitment for a period of five days, or that...the patient would be likely to injure himself or others" -- South Dakota.

58. The interested party is summoned to appear with the prospective patient at the time and place of the hearing -- Tennessee, D.C.

59. "An indigent person...between five and twenty-one years of age, or a person under five years of age or over twenty-one years of age only with the written consent of the commissioner [of Mental Health]...may be received into such [Brandon Training] school at the expense of the state..." -- Vermont, §2745.

60. The certifying physician "shall if practicable be the person's family physician" -- Virginia.

61. There is no provision for original judicial commitment, but see: REV. CODE WASH. tit. 72, ch. 33, §240, providing for appeal to the superior court by a parent or guardian aggrieved by an administrative ruling pertaining to the "admission, placement or discharge of his ward"; tit. 72, ch. 33, §150, providing for petition to the probate department of the superior court by the superintendent of a state school to prevent the removal of a voluntary patient -- Washington.

62. Application may be made "by at least 3 adult residents of the state, one of whom must be a person with whom the patient resides or at whose home he may be or a parent, child, spouse, brother, sister or friend of the patient, or the sheriff or a police officer or public welfare or health officer" -- Wisconsin.

63. See ch. 262, §06(2), providing that if notice is given to a minor under 14, it shall also be given to his parent, guardian, custodian, or an appointed guardian ad litem; if to a person under guardianship, also to his guardian; and if to an incompetent person without a guardian, also to an appointed guardian ad litem -- Wisconsin.

IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES.

STATE AND STATUTE [n.a]	HEARING		Hearing Held Before Special Commission or Referee	PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL		Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	COURT ORDER			
	Mandatory	If Requested by		Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary			Commitment: Temporary: not to exceed	Commitment: Indeterminate	Adjudication [n.c]	Appointment of Guardian [n.d]
AAMD DRAFT ACT (no provision)																				
ALABAMA CODE(1959) Title 45	[n.1]																	§259;tit.13, §358		
ALASKA STAT.(1962) Title 47,ch.30	§070				§070 (g)		§070 (g)	§070 (g)		§070 (f) patient	§070 (h)	§070(h) (mandatory) counsel or adviser	§070(h) patient or his counsel [n.2]			§070(i) dangerous or incapable of deciding hospitalization [n.3]		§070(i),(j)		
ARIZONA REV.STAT.(1956) Title 8	§423																	§§423(B), 424		
ARKANSAS STAT.(1965 Supp.) Title 59	§305 (c)															§305(a) not psychotic		§§305(c), 306		
CALIFORNIA WELFARE & INSTITUTIONS CODE (1965 Supp.)	§§559, 5594				§5593													§5599		
COLORADO REV.STAT.(1965 Supp.) Ch.71,art.1	§6		§6(1) medical commission of two doctors		§6(3)			§7(1)		§7(1) patient	§7(1)	§8(1) (mandatory even if represented) attorney as guardian ad litem				§7(2)(d),(e)	§§4,11(1) (optional) three months [n.4]	§11(1)	§11(1)	
CONNECTICUT GEN.STAT.(1965 Supp.) Title 17	§172d																	§172d		
DELAWARE (no provision)																				
FLORIDA STAT.(1965 Supp.) Ch.393	[n.5]		§11;ch.394,§22(6) (a) examining commission of citizen and two physicians						§11 [n.6]							§11 irresponsible or requiring restraint, but not insane		§§01 (2),11	[n.7]	
GEORGIA CODE(1965 Supp.) Title 88	[n.1]		§2507(b),(c) examining committee of two physicians and (optional) attorney or guardian ad litem						§2507 (c) [n.6]			§2507(b) (optional) attorney or guardian ad litem to serve on committee			§2507 (d), if physician's report not unanimous	§2507(a) [n.8]		§2507(e)		

IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

STATE AND STATUTE [n.a]	HEARING		Hearing Held Before Special Commission or Referee	PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL		Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	COURT ORDER			
																	Commitment			
	Mandatory	If Requested by		Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary			Temporary: not to exceed	Indeterminate	Adjudication [n.c]	Appointment of Guardian [n.d]
HAWAII REV.LAWS(1965 Supp.) Ch.82	§7								§7							§10	§§7,10 sixty days [n.9]	§§7,10 [n.9]		
IDAHO CODE(1965 Supp) Title 66	§329 (d)		§329(j) (optional)special commissioner [n.10]		§329 (e), (g)	§329 (g) (optional)	§329 (g)	§329 (f), (g)		§329 (g) patient	§329 (g)	§329(g) (mandatory)			§329 (j)	§329(h)(2),(3) dangerous or incapable of deciding care or treatment	§329(h)(3), (i) (optional) six months [n.4]	§329(h)(3), (i)		
ILLINOIS STAT.(1965) Ch.91-1/2	§§8-5, 8		§8-7 (optional, if no jury trial) commission of two physicians or physician and psychologist		§8-5						§§2-2, 8-22	§§8-22,22.1 (mandatory if patient requests or is indigent)	§8-6 patient, spouse, relative or attorney therefor [n.2]	§§8-7, 8 necessary or desirable [n.2]	§§8-9, 15	§8-10 patient may request voluntary admission		§8-15	§8-13 (optional)	
INDIANA STAT. (Burns, 1964; 1966 Supp.) Title 22	§1907			§§1719, 1807 in chambers														§§1903, 1906,1907		
	§§1209, §1213 or §1216				§1213 or §§1216, 1217	§1209				§1213 or §§1216, 1219 judge or patient	§1209					§1208 patient may apply for voluntary admission	§1213 (optional) ninety days [n.4]	§1218	[n.7]	§§1219, 1256 (mandatory if committed patient has estate)
IOWA CODE(1965 Supp.) Ch.222	§§20, 22		§§28,29 (optional) commission of physician and psychologist			§§26, 27 if requested or ordered by judge			§23 [n.11]		§23	§22 (mandatory even if represented)			§30	§§17(2),31 welfare of patient and community		§31		§31 (1) (optional)
KANSAS (no provision)																				
KENTUCKY REV.STAT.(1963) Ch.202	§070			§§130, 140 (1)					§130 [n.11]		§140 (3)	§050 (mandatory) [n.12]	§140(1)(b) patient [n.13]					§160	§§040 (1)(b), 045	
LOUISIANA REV.STAT.(1950; 1965 Supp.) Title 28	§§53 (A), 55 [n.14]	[n.14]	§54 (optional) commission of coroner and one or two other physicians		§55		§55		§55	§53(B) judge					§55	§53(A) best interest of patient and of community		§55 [n.15]		

IV - B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

STATE AND STATUTE [n.a]	HEARING		Hearing Held Before Special Commission or Referee	PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL		Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	COURT ORDER			
																	Commitment			
	Mandatory	If Requested by		Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary			Temporary: not to exceed	Indeterminate	Adjudication [n.c]	Appointment of Guardian [n.d]
MAINE REV.STAT.(1964, 1966 Supp.) Title 34	§2152 (3)		§2152 (optional) commissioner who is member of bar		§2152 (3)	§2152 (3) unless public hearing is requested	§2152 (3)	§2152 (3)		§2152 (3) patient	§2152 (3)	§2152(3) (mandatory)			§2152 (3)	§2152(3) voluntary admittance cannot be accomplished		§2152(3)		
MARYLAND CODE(1957) Art.26	§60		[n.16]	§60 (optional) in chambers		§60 (optional)	§60									§66	§61 period determined by judge, but not beyond minority			
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§66				[n.17]	[n.17]				[n.17]	[n.17]							§66 §66A		
MICHIGAN STAT.ANN.(1956, 1965 Supp.) Title 14	§811									§811 [n.11]	§811	§811 (mandatory if no personal notice; optional otherwise) guardian ad litem	§811 patient, relative, or person with whom residing [n.2]	§811 [n.2]			§§811,844 (optional) 60 days [n.4]	§§811,813	§811	§812 (optional for committed patient) temporary guardian
MINNESOTA STAT.(1965 Supp.) Ch.525	§752 (2)			[n.18]					[n.18]		§751 (4)	§751(4) (mandatory for indigent if requested or if held for observation; optional otherwise) [n.19]						§§76,753(2)	[n.7]	§753(2) (mandatory for commit patient) commissioner of public welfare as guardian

IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

STATE AND STATUTE [n.a]	HEARING		Hearing Held Before Special Commission or Referee	PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL		Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	COURT ORDER			
																	Commitment		Adjudication [n.c]	Appointment of Guardian [n.d]
	Mandatory	If Requested by		Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary			Temporary: not to exceed	Indeterminate		
MISSISSIPPI CODE(1952;1965 Supp.)	§6909-05		§6909-04,05 two physicians qualified in mental medicine	§6909-05 [n.20]	[n.20]				§6909-04,05						§6909-07	§§6909-03,06,07	§6909-07 [n.9]	§6909-07 [n.9]		§6909-07 (optional if patient harmless and not in need of confinement)
MISSOURI (no provision)																				
MONTANA REV.CODES(1965) Title 80	§2305															§2305		§2305		
NEBRASKA REV.STAT.(1965 Supp.) Ch.83	§222															§222		§222		
NEVADA REV.STAT.(1963) Ch.62	§§140(1), 190(3)	[n.21]	§090 (optional)master [n.16,21]		§190 (3)	§190 (3)	§190 (3)		§§140, 160		§085 (1)	§085(1) (optional if patient unable to employ counsel)			§090 (4) [n.21]	§290		§200(1)		
NEW HAMPSHIRE REV.STAT.(1964) Ch.171	§13															§5 best interest of patient and [illegible]		§13		
NEW JERSEY (no provision)																				
NEW MEXICO STAT.(1965 Supp.) Ch.34,art.3	§§6(B) 6.2(C)									§6(B) court [n.11]						§6(B) without adequate care or supervision,or a public menace	§6(B) thirty days [n.9]	§§6.1(B), 6.2(C) [n.9]		
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.)		§124 (5) relative or friend or court	§124(5) (optional if judge cannot hear) referee		§124 (5)					§124 (5) judge	§88 (b)	§88(c) (optional)			§124 (5)	§124(4),(5),(7)	§124(4),(5),(7) sixty days [n.9]	§124(1),(7) [n.9]		

IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

STATE AND STATUTE [n.a]	HEARING		Hearing Held Before Special Commission or Referee	PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL		Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	COURT ORDER			
																	Commitment			
	Mandatory	If Requested by		Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary			Temporary; not to exceed	Indeterminate	Adjudication [n.c]	Appointment of Guardian [n.d]
NORTH CAROLINA (no provision)																				
NORTH DAKOTA CENTURY CODE (1960;1965 Supp.) Title 25	§03-11 (5), (6)		§03-11(9) (optional)special commissioner		§03-11 (6)	§03-11 (6)	§03-11 (6)	§03-11 (6)		§03-11 (6) patient	§03-11 (6)	§03-11(6) (mandatory if requested by patient)			§03-11 (9)	§03-11(7)		§§03-11(7), 04-05		
OHIO REV.CODE(1965 Supp.) Ch.5122	§15		§15 (optional)deputy clerk appointed referee		§15	§15	§15	§15	§15 [n.11]	§15 patient	§15	§15 (optional) attorney §12 (mandatory if no personal notice) guardian ad litem				§15 patient may apply for voluntary admission during temporary commitment	§15 ninety days [n.9]	§15 [n.9]	§36	
OKLAHOMA (no provision)																				
OREGON REV.STAT.(1965) Ch.427									§025(1) [n.6]							§§015,025(1) in need of care,custody or training		§059(1)	§059 (1)	§067 (optional) ward of court
PENNSYLVANIA STAT.ANN.(1954; 1965 Supp.) Title 50		§1203 (a) court			§1203 (a)	§1203 (a) (optional)				§1203 (a) court						§1203(c)		§1203(c)		
RHODE ISLAND GEN.LAWS(1956) Title 26,ch.5	§§11, 12				§11				§§10, 11							§§10,12 in need of restraint for own welfare or welfare of public		§12		
SOUTH CAROLINA CODE OF LAWS (1962) Title 32		§§985, 986, 1086, 1087 (not specified)			§§986, 1087	§986, 1087 (optional)	§§986 1087	§§986 1087		§§986, 1087 patient						§§987,1088 incapable of deciding admittance or dangerous		§§987,1088	[n.7]	
SOUTH DAKOTA CODE(1960 Supp.) Title 30	§0107				§0404					§0107 subcommission or patient	§0107					§0405	§0108 (optional) reasonable time [n.4]	§§0108,0409	§0409	

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IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

STATE AND STATUTE [n.a]	HEARING			PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL				COURT ORDER			
																	Commitment			
	Mandatory	If Requested by	Hearing Held Before Special Commission or Referee	Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary	Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	Temporary: not to exceed	Indeterminate	Adjudication [n.c]	Appointment of Guardian [n.d]
TENNESSEE CODE(1966 Supp) Title 33	§504				§504	§504 (optional)				§504 patient or judge	§504	§504 (mandatory) attorney §313 (optional) guardian ad litem				§§501(3),502 §505 patient, parent guardian or custodian does not consent to hospitalization		§505	§313	§§313, 505 [n,22]
TEXAS REV. CIVIL STAT. (Vernons 1966 Supp.) Art.3871b	§6				§7					§5 patient	§5	§6 (mandatory if no notice to interested party)	§5 interested person	§5				§8	§8	
UTAH CODE(1961) Title 64,ch.6	§§17, 18								§§16, 17,18							§20	[n.23]	§§20,21 [n.23]		
VERMONT STAT.ANN.(1959) Title 18	§2747																	§2748		
VIRGINIA CODE(1953;1966 Supp.) Title 37	§62		§§62-64 commission of judge or justice and two physicians or physician and clinical psychologist [n.24						§§61, 61.1 (d) [n.11]		§61.1 (b), (c),(d)	§62.1 (mandatory)				§71		§66,71		
	§99										§99					§100 patient may apply for voluntary admission during temporary commitment [n.25]	§99,100 ninety days [n.25]	§102 [n.25]		
WASHINGTON (no provision)																				
WEST VIRGINIA CODE (1965 Supp.)	§2661				§2654	§2661	§2661	§2661		§2661 patient		§2661 (mandatory) attorney as guardian ad litem				§2661 dangerous or incapable of deciding hospitalization	§2661 (optional) six months [n.4]	§266	§2661	§2681 (mandatory for committed patient) committee
WISCONSIN STAT. (1965) Ch.51	§02		[n.16]		§02(2)	§02(2)				§02(1) (a) (2) court or patient		§02(4) (optional) guardian ad litem	§03 patient, relative or friend			§10(4) patient may apply for voluntary admission [n.26]	§02(5)(b) (optional)	§§02(5)(c), (d);05(1)		

IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

STATE AND STATUTE [n.a]	HEARING		Hearing Held Before Special Commission or Referee	PLACE OF HEARING		CONDUCT OF HEARING			PRESENCE OF PATIENT		LEGAL COUNSEL		JURY TRIAL		Dismissal of Jury Verdict or Commission Findings	Special Criteria for Commitment [n.b]	COURT ORDER			
																	Commitment			
	Mandatory	If Requested by		Courtroom	Discretionary	Closed	Informal	Relaxed Rules of Evidence	Mandatory	If Requested by	Patient's Right to be Represented	Court Appointment if Patient not Represented	Mandatory if Requested by	Discretionary			Temporary: not to exceed	Indeterminate	Adjudication [n.c]	Appointment of Guardian [n.d]
WYOMING STAT. (1957) Title 9	§§448, 449								§449 [n.11]		§449	§444 (mandatory if patient is minor without parent or guardian) guardian ad litem	§449 court, any party or any citizen [n.2]	§449		§§449,452		§§449,452		§456 (mandatory for committed patient with estate and no guardian)
DISTRICT OF COLUMBIA CODE (1966 Supp. V) Title 21	§§1104, 1107								§§1104, 1106				§1107 patient, relative or person with whom residing	§1107		§1108 welfare of persons of community		§1108		

Chart IV-B. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- HEARING PROCEDURES

FOOTNOTES

a. "State and Statute." For the applicability of the charted procedures, and the availability of other procedures, see footnotes cited in this column, Chart IV-A.

b. "Special Criteria for Commitment." This column should be compared with the statutory definitions cited in Charts I-A and I-B. Many of these definitions include criteria for hospitalization, and these criteria are frequently incorporated in commitment provisions which require the court to find that the prospective patient is "mentally retarded," "mentally deficient," "feeble-minded," etc. Provisions of the latter type are not tabulated in this column, and commitment provisions which merely repeat all or part of the criteria included in a statutory definition are tabulated only by indication of the relevant sections. For commitment provisions which contain special criteria not included in a statutory definition, the statutory sections are indicated and the criteria are noted.

c. "Adjudication." Provisions tabulated in this column are basically of two types. First, there are provisions for a court to issue, in conjunction with its commitment order, an "adjudication," "certification," "declaration," etc., that the patient is "mentally retarded,""mentally deficient," "feeble-minded," etc. Although such judicial action usually affects the patient's legal competency, it is not always possible to ascertain whether such a provision is so intended. Second, there are statutory provisions which state that an order of commitment also constitutes an adjudication of the patient's incompetency, although no additional action on the part of the committing court may be required.

d. "Appointment of Guardian." Provisions tabulated in this column are limited to those under which guardianship may result from commitment proceedings, rather than special guardianship proceedings. The provisions are of two types: first, those providing that if a patient is committed, the court must (or may) also appoint a guardian for him; and second, those providing that instead of ordering hospitalization, the court may appoint a guardian, as one of the alternative dispositions available after a finding that the patient is "mentally retarded," "mentally deficient," "feeble-minded," etc.

1. There is no specific provision for hearing, but: the "judge shall examine three persons, one of whom must be a practicing physician, who are acquainted with the person sought to be committed, and with the condition of such person..." -- Alabama, §239; the examining physicians not only examine the prospective patient, but also hear testimony of witnesses under subpoena -- Georgia.

2. A jury is composed of: "six adult residents" -- Alaska; "six persons, at least one of whom shall be...a physician or a psychologist" -- Illinois; "6 freeholders" -- Michigan; "6 people" whose verdict must be "agreed to and signed by at least 5 of the jurors" -- Wisconsin; "six men" -- Wyoming.

3. The charted provisions may not apply to the mentally retarded. Compare §070(i) with §340(10), as cited Chart I-A -- Alaska.

4. An optional temporary commitment may be followed: by judicial extension for an additional similar period, discharge, or indeterminate commitment proceedings -- Colorado, Indiana, Michigan; by judicial discharge or indeterminate commitment -- Idaho, South Dakota, West Virginia.

5. It is not clear whether the provision for hearing of ch. 394, §22(4), is incorporated in the charted procedure of ch. 393, §11, which provides for the county judge to "appoint a commission as is appointed to examine persons alleged to be insane..." -- Florida.

6. There is no specific provision for hearing, but: the judge orders the prospective patient brought before him -- Florida; the special commission examines the prospective patient -- Georgia; the judge must "view" the prospective patient -- Oregon.

7. It seems apparent from the procedures for restoration and discharge that the order for commitment also constitutes an adjudication of incompetency -- Florida, Indiana, Minnesota, South Carolina.

8. The court takes jurisdiction on the basis of the petitioner's allegations not only that the prospective patient is in need of, but also that his parent or guardian has failed to secure, "care, training, treatment, hospitalization, or rehabilitation" -- Georgia.

9. If it is determined that the patient should be committed, there must be an initial temporary commitment, which is followed either by discharge or by final indeterminate commitment upon certification from the institution to which the patient was temporarily committed -- Hawaii, Mississippi, New Mexico (unless patient was examined and certified by hospital evaluation board), New York, Ohio.

10. "In any case in which the court refers an application to the commissioner, the commissioner shall promptly cause the proposed patient to be examined and on the basis thereof shall either recommend dismissal of the application or hold a hearing as provided in this section and make recommendations to the court regarding the commitment of the proposed patient..." -- Idaho.

11. The prospective patient must be present, or has a right to be present, unless: the court determines that his presence would not be in his best interest -- Iowa, Virginia; two examining physicians state that the patient's "condition is such that it will be unsafe or unwise to bring him into court," or two hospital staff physicians certify that the patient is "mentally defective" -- Kentucky; the superintendent of an institution to which the patient was temporarily committed or two physicians certify that the patient's "condition is such as to render...his appearing at such hearing improper and unsafe" -- Michigan; if the court does not deem it "proper that such person appear before the court" -- New Mexico; "his presence would be injurious to him, as determined by the head of the hospital or the court-appointed physician and concurred in by the court" -- Ohio; "both examiners...[have] certified that to be present at the hearing would be injurious to the proposed patient" -- Wyoming.

12. "... and the attorney for the Commonwealth also shall prevent the finding of any person to be...mentally defective who, in his opinion, is not such" -- Kentucky, §050.

13. "If the petition has requested that the defendant be adjudged incompetent, the court shall impanel a jury" -- Kentucky, §14 (1)(a). See note 24, Chart IV-A.

14. But see §56: "Any person committed without a hearing in accordance with R.S. ...28:53...shall be entitled to a hearing upon demand." It has been held that commitment without hearing is not a denial of due process, because commitment is a matter of police regulation for protection of both the patient and the general public, and because of the availability of a subsequent hearing under §56 [In re Bryant, 214 La. 573, 38 So. 2d 245 (1949)] -- Louisiana.

15. "A minor committed by the juvenile court may be retained in the institution beyond the age of twenty-one years if the superintendent deems further detention necessary" -- Louisiana, §60.

16. The probation officer investigates the case and may assist the court -- Maryland, §57; Nevada, §130(2)(b). "If requested by the judge, the district attorney shall assist in conducting proceedings" -- Wisconsin, §02(3).

17. Section 66 states that the "order of commitment" shall be "made in accordance with section fifty-one," which relates to commitment of the mentally ill. It is not clear whether this provision is intended to incorporate the procedures of §51 whereby the prospective patient may request a private hearing at a convenient place, at which he may be present and be represented by counsel -- Massachusetts.

18. See MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. III, §IV.A.1, at 13 (1959): "The person for whom the hearing is held must be present in court to be seen and questioned by the examiners" -- Minnesota.

19. When parents petition for the commitment of their child, it has been held that the court must appoint a guardian ad litem who is competent to receive service of notice and disinterested to protect the interests of the minor [In re Wretlind, 225 Minn. 554, 32 N.W.2d 161 (1948)]. "Because of this decision, some courts now appoint a guardian ad litem for the patient in every case...[since] some courts now hold that this decision applies in all cases" [MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. III, §IV.A.2, at 13 (1959)]. See also OPS. ATT'Y GEN. 679-G (Oct. 7 & Dec. 22, 1948), stating that appointment of a guardian ad litem is advisable in the case of an adult, and that the same person may be appointed as guardian ad litem and counsel for a prospective patient -- Minnesota.

20. "In all cases, the said inquiry and examination shall be held and conducted in the presence of the clerk and in the courtroom of the county or the office of said clerk, unless the person alleged to be suffering from such mental or nervous condition is physically unable to appear in the courtroom or at the clerk's office" -- Mississippi.

21. Section 090(4): "Notice in writing of the master's findings and recommendations, together with the notice of right of appeal as provided herein, shall be given by the master, or someone designated by him to the parent, guardian or custodian, if any of the child, or to any other person concerned. A hearing by the court shall be allowed upon the filing with the court by such person of a request for such hearing, provided that the request is filed within 5 days after the giving of the notice. In case no hearing by the court is requested, the findings and recommendations of the master, when confirmed or modified by an order of court, become a decree of the court" -- Nevada.

22. Section 313 requires that "whenever a mentally retarded individual is hospitalized, the court shall enter an order of incompetency and appoint a guardian, if there be none." Under §505, instead of hospitalization, "if it is found that the interests and welfare of the person and of others in the community would better be served...or if there are no suitable accommodations available for him, the court may appoint a suitable person as guardian" -- Tennessee.

23. Section 21 provides that "the warrant of commitment, proceedings thereon, and return thereof, shall be, as near as may be, as provided for insanity matters in chapter 7 of this title." It is not clear whether this provision is intended to incorporate the provisions of tit. 64, ch. 7, §36(H), for optional temporary or indeterminate commitment -- Utah.

24. "The judge or justice shall summon two licensed and reputable physicians, one of whom shall, when practicable, be the physician of the person who is alleged to be...mentally deficient... In case the person is alleged to be mentally deficient, the judge or justice may in his discretion summon, in lieu of one of the physicians, a clinical psychologist.... The judge or justice and the two physicians, or the judge or justice and the physician and psychologist, as the case may be, shall constitute a commission..." (§62). "...the physicians, or physician and clinical psychologist, shall make a personal examination of such person...." (§63). "If the two physicians, or physician and clinical psychologist... do not agree, another physician shall be summoned. If the person being examined request it, there shall be summoned a physician of his choice. Any physician so summoned shall make a personal examination of such person and thereafter shall sit with and be a member of the commission..." (§64) -- Virginia.

25. "A person committed under [§99]...shall not be detained in the hospital, colony, or private institution more than ninety days, unless he makes application for further care and treatment as a voluntary patient...or is committed..."(§100). "Any person in a State hospital or private institution...may, during the period of observation as specified in [§100] ...or at the expiration of such period, be generally committed as...mentally deficient by the judge or justice...upon the duly sworn certificate of the superintendent of the hospital or of the chief medical officer of a private institution and one or more physicians of the staff...provided, however, it shall not be necessary for any person generally committed under this section to be brought before the judge or justice for the purpose of such commitment...."(§102) -- Virginia.

26. DIV'N OF MENTAL HYGIENE, DEP'T OF PUBLIC WELFARE: MANUAL OF MENTAL RETARDATION ch. 12, §12.02(B), at 1 (1963): "It is now generally accepted that the voluntary admission procedure should be used except for persons who may be potentially harmful to themselves or others and for those whose health and welfare would be jeopardized by remaining in their own homes or in the community and the authority of the court is required to accomplish admission" -- Wisconsin.

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE AND STATUTE	COMMITMENT TO					ADMISSION							JUDICIAL REVIEW						
	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Approval by			Criteria				Patient Informed of Rights	Habeas Corpus		Appeal			
						Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	Mental Examination				Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
										By	When Conducted								
											Before Admission	After Admission							
AAMD DRAFT ACT (no provision)																			
ALABAMA CODE (1959; 1965 Supp.) Title 45	§§231(1),239; tit.13,§358	tit.13, §358 (discretionary for juvenile court)				§239			§239					tit.15,§§1, 3,4 patient or other persons	tit.15 §3 (sanity; jury if requested)				
ALASKA STAT. (1962) Title 47, ch.30	§§070(j), 340(6) [n.1]	§§070(j), 340(6)						§340 (10)		§040(a) physician [n.2]		§040(a) within 48 hours		§100 patient or interested party					
ARIZONA REV. STAT. (1956) Title 8	§§421-424						§423(A) [n.3]							tit.13, §§20001, 20002 patient or other person					
ARKANSAS STAT. (1965 Supp.) Title 59	§§303-306						§305 (a) [n.3]		[n.3]	[n.3]	[n.3]			tit.34,§1703 patient					
CALIFORNIA WELFARE & INSTITUTIONS CODE (1962; 1965 Supp.)	§§5592,5599							§5599	§5599	[n.4]		§6621 within three days [n.4]	§4016 access to statutes [n.5]	§6620 Dep't of Mental Hygiene, patient, relative or friend	§6620				
COLORADO REV. STAT. (1965 Supp.) Ch.71, art.1	§11(3) [n.1]	§11(3)	§11(3) suitable place	§11(3) proper person		§29			§29					ch.65,,2 patient		§13(1) patient, attorney, guardian ad litem guardian, parent, spouse, or adult next of kin	§13(1) same (to review commission findings)	§13(1)	§13(2) if requested (six persons)
CONNECTICUT GEN. STAT. (1965 Supp.) Title 17	§172d							§172d						tit.52,§466 patient		tit.45,§288 person aggrieved	tit.45, §288 superior		
DELAWARE (no provision)																			

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE AND STATUTE	COMMITMENT TO					ADMISSION							JUDICIAL REVIEW						
						Approval by			Criteria					Habeas Corpus		Appeal			
										Mental Examination									
											When Conducted								
	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	By	Before Admission	After Admission	Patient Informed of Rights	Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
FLORIDA STAT. (1960; 1965 Supp.) Ch.393	§§01(2),11				[n.6]	§11		§03	§§07, 11					ch.79,§01 patient or anyone			§12(4) district court of appeal or supreme court		
GEORGIA CODE(1965 Supp.) Title 88	§§2502(d), 2510				§2514 (optional if hospitalization not available)			§§2506, 2507 (e)	§§2506, 2507 (e)					§517 patient or friend of court	§517				
HAWAII REV.LAWS(1965 Supp.) Ch.82	§6				[n.6]			§10		§10 one or more physicians and clinical psychologists		§10 within sixty days (temporary commitment)		ch.239,§§2, 3 patient		§7 patient, guardian, custodian or adult relative	§7 supreme		
IDAHO CODE(1965 Supp.) Title 66	§§317(f); 325;329(h) (3),(i)	§§317(f), 325	§329(1)							§333 hospital staff		§333 as soon as practicable		§347 patient or friend					
ILLINOIS STAT. (1963) Ch.91-1/2	§8-15	§§8-15,19		§§8-15,19 relatives		§8-19 private hospital			§8-15 state institution					§10-13 (not specified)	§10-14	§2-3 person aggrieved, including patient			
INDIANA STAT. (Burns, 1964; 1965 Supp.) Title 22	§§1903,1906, 1907					§1907			§1907										
	§§1201(5), 1211,1213, 1218,1219, 1228 [n.1]	§§1201(5), 1213 temporary commitment				§§1220, 1226			§1228 (1)					§1307 (not specified)		§1210 person aggrieved, including patient	§1210 appellate		
IOWA CODE(1965 Supp.) Ch.222	§§1,6,31(3)	§31(2)	§36 if state institution unable to receive patient		§§31(1), 33-35	§31(3) state			§31(3) state	§§5,31(3) superintendent or designee	§31(3)			§41 (not specified)					
							§31(2) private			§31(2) physician and psychologist	§31(2)								

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE AND STATUTE	COMMITMENT TO					ADMISSION								JUDICIAL REVIEW						
						Approval by			Criteria					Habeas Corpus		Appeal				
										Mental Examination										
											When Conducted									
	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	By	Before Admission	After Admission	Patient Informed of Rights	Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
KANSAS (no provision)																			
KENTUCKY REV.STAT.(1963) Ch.202	§160 [n.1]	§160		§160 proper and competent committee	§230(1) (mandatory if no vacancy in institution)				§230					ch.419,§020 patient					
LOUISIANA REV.STAT.(1950; 1965 Supp.) Title 28	§§2(8),50(3),53(A)	§§2(8),50(3),53(A)				§50(3) [n.7]			§50(3) state institution [n.7]					§171(6) patient					
MAINE REV.STAT.(1964; 1966 Supp.) Title 34	§§2151,2152(3)								§2152					§2153 parent, spouse, or adult relative or friend					
MARYLAND CODE(1957) Art.26	§61(2)	§61(2)		§61(2) person selected by judge										tit.42,§3 patient or any person		§65 aggrieved interested party	§65 Court of Appeals		
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§§10,66 [n.1]	§10 ?						§66		[n.8]		[n.8]		§92 any person	§92				
	§66A (optional)			§66A Dep't of Mental Health				§66A											
MICHIGAN STAT.ANN.(1956; 1965 Supp.) Title 14	§§811,849,872 [n.1]	§§811,822,850			[n.6]			§845 if woman over 40 or senile man	§§814,845	[n.9]		[n.9]		tit.27A, §4307 (1962) patient or anyone	GEN. CT. RULES §712.10(5) (1963)	§843 person aggrieved	§843 circuit		tit. 27, §3178 (42) if requested
MINNESOTA STAT.(1965 Supp.) Ch.525	§762(2); ch. 252, §03	§762(2)		§§76,761 any person giving bond §762(2) child welfare board or other agency	§753(2) [n.6]				[n.10]		[n.11]			[n.12]		§79 commissioner of public welfare or person aggrieved	§79 district	§79	

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE AND STATUTE	COMMITMENT TO					ADMISSION							JUDICIAL REVIEW						
						Approval by			Criteria				Patient Informed of Rights	Habeas Corpus		Appeal			
									Available Accommodations	Mental Examination									
											When Conducted								
	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency		By	Before Admission	After Admission		Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
MISSISSIPPI CODE(1952)	§6909-07, 6911 [n.1]				§6909-07 if harmless and not in need of confinement	§§6909-07, 6914	§6909-07		§6906, 6914	§6909-07 director and staff of hospital		§6909-07 (temporary commitment)		§6909-08; tit.24,§6780 patient,relative or other person	tit.24 §6780	§6909-08,14 patient,relative or other person	§6909-08 chancery (chancellor) [n.13]	§6909-08	
MISSOURI (no provision)																			
MONTANA REV.CODES(1965) Title 80	§§2301(1), 2305							§2306	§2306					tit.94, §101-1 patient					
NEBRASKA REV.STAT.(1965 Supp.) Ch.83	§§217,220(1)(b),222													ch.29,§2801 patient or any person			ch.43, §202 district		
NEVADA REV.STAT.(1963) Ch.62	§200(1)(b); ch.433,§300(1)(a)	§200(1)(b) in or out of state	§200(1)(a) supervision in own home	§200(1)(suitable person §200(1)(c) care and treatment	§200(1)(public or private agency	ch.433, §300(1)(a) state hospital				ch.433,§300(2) (optional)state hospital	ch.433, §300(2)			§040(2) (not specified)			§280 supreme		
NEW HAMPSHIRE REV.STAT.(1964) Ch.171	§§1,13								§§9, 23					ch.534,§1 patient					
NEW JERSEY (no provision)																			
NEW MEXICO STAT.(1965 Supp.) Ch.34,art.3	§§2,6 [n.1]		§6,1(C) other appropriate action			§§5 (E); 6(C), (D); 6.2 (C)	§§5 (E), 6(D)		§§5(E) 6(C), 6.2 (C)	§§6.1(A),6.2(A) staff of institution;hospital evaluation board [n.2]		§6.1(B) (temporary commitment)as soon as practicable; within 30 days		ch.22,art.11, §1 patient					
NEW YORK MENTAL HYGIENE LAW (McKinney 1951; 1966 Supp.)	§§120;124(1),(4),(5)	§§124(1),(4),(5); 424		§124(4) if harmless,relatives or committee		§124 (7), (8)			§120 state institution	§124(7) director of designated medical officer		§124(4),(7) (temporary commitment)within sixty days	§88 (b)	§426 patient,relative or friend	§426	§125 patient,relative or friend	§125 supreme	§125	§125 (mandatory)

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE AND STATUTE	COMMITMENT TO					ADMISSION								JUDICIAL REVIEW					
						Approval by			Criteria										
										Mental Examination			Patient Informed of Rights	Habeas Corpus		Appeal			
											When Conducted								
	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	By	Before Admission	After Admission		Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
NORTH CAROLINA (no provision)																			
NORTH DAKOTA CENTURY CODE (1960;1965 Supp.) Title 25	§§01-01(5), 04-05								§03-07	§03-11(10) staff of institution		§03-11 (10) as soon as practicable		§03-21 (not specified)	§03-21				
OHIO REV.CODE(1965 Supp.) Ch.5122	§§01(F);15	§§01(F), 15(B)	§15(F) other suitable facility	§15(D),(E) relative or friend	[n.6]	§15 consent of non-state facilities			ch. 5125, §30 state hospital	§19 hospital staff		§19 as soon as practicable		§30 patient or friend					
OKLAHOMA (no provision)																			
OREGON REV.STAT.(1965) Ch.427	§§010,059(1) 065(1) (optional)			§067 relative or guardian giving bond	§067 ward of court				§065 (1)					ch.34,§§310, 340 patient or any person		§085 dissatisfied proper party	§085 circuit	§085 [n.14]	
PENNSYLVANIA STAT.ANN.(1954; 1965 Supp.) Title 50	§§1201(a)(5) 1203(c) [n.1]	§§1201(a) (5),1203(c)				§1203 (e)	§1203 (e)							§§1241, 1482(a) patient or anyone	§1482 (b)				
RHODE ISLAND GEN.LAWS(1956) Title 26,ch.5	§12		§12 provisions for adequate restraint											tit.10,ch.9, §1 patient		§16 person aggrieved	tit. 12, ch.22 §1 superior	tit. 2,ch. 17,§1	tit. 12, ch.17 §3 unless waived
SOUTH CAROLINA CODE OF LAWS (1962;1965 Supp.) Title 32	§§931(2), 987 [n.1]							§988	§988	§1017 staff member; full staff		§1017 promptly; within 30 days		§§915,990, 1091 patient or friend		§§585,1090 petitioner or person within patient's family	§989, 1090 common pleas	§§989, 1090	§§989, 1090
	§§1062,1088						§1089		§1089										
	§§1095.1, 1095.9																		
SOUTH DAKOTA CODE (1960 Supp.) Title 30	§§0405, 0605-1					§0605-1		§0405	§0605-1					§§0111,0409 patient	§0111				

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE	COMMITMENT TO					ADMISSION							JUDICIAL REVIEW						
						Approval by			Criteria					Habeas Corpus		Appeal			
										Mental Examination									
											When Conducted								
AND STATUTE	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	By	Before Admission	After Admission	Patient Informed of Rights	Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
TENNESSEE CODE(1966 Supp.) Title 33	§§302(b), 501,505	§§302(b), 501,505			§§313,505 [n.15]	§501			§§501, 505				§306 (h) information and assistance	§305(i) patient or friend	§316				
TEXAS REV. STAT. CIVIL (Vernons, 1966 Supp.) Art.3871b	§§8,12; art. 5547-202, §2.19							§§8, 10	§§8, 10					art.11.01 patient					
UTAH CODE(1961) Title 64,ch.8	§1,20									[n.16]		[n.16]		[n.16]					
VERMONT STAT.ANN.(1959; 1961;1965 Supp.) Title 18	§§2741,2748							§2745 if under 5 or over 2	§2748	[n.17]	[n.17]			§2750;tit. 12,§3953 patient or any person		§2750;tit.18, §2598;tit.12, §2555 injured interested person	§2598 county	§2750; tit. 12, §2384	tit. 12, §2384 unless waived
VIRGINIA CODE(1953;1966 Supp.) Title 37	§§1.1(12), 61.1(a)(3), 99,102 [n.1]	§§1.1(13), 61.1(a)(3), 71.3,99,102 [n.18]		§132 responsible person giving bond		§90			§§79, 86.1	§§90,210 superintendent and assistants		§§90,210 for not less than forty-five days		§§122,123 patient	§§122, 123	§§71.1,71.4 patient	§71.1 court of record [n.19]		§71.1 if demanded (jury of seven)
WASHINGTON (no provision)																			
WEST VIRGINIA CODE(1965 Supp.)	§§2647d, 2648,2661 [n.1]			§2661 responsible person, giving bond if patient is dangerous	§2681 committee									§5324(1961) patient or some one		§2662 person adversely affected	§2662 circuit		
WISCONSIN STAT.(1965) Ch.51	§§05(1), 22(1)	ch.58, §05(2)												ch.292, §§01,03 (1958) patient or some person	ch. 292, §01(2) (1958) (sanity)				

IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

STATE AND STATUTE	COMMITMENT TO					ADMISSION								JUDICIAL REVIEW					
						Approval by			Criteria						Habeas Corpus		Appeal		
										Mental Examination									
											When Conducted								
	Public Institution	Private Institution	Other Place	Care, Custody or Supervision of	Guardianship	Superintendent or Head of Institution	Board or Staff of Institution	State Officer or Agency	Available Accommodations	By	Before Admission	After Admission	Patient Informed of Rights	Petition By	Review of Mental Condition	Petition by	Court	Trial De Novo	Jury Trial
WYOMING STAT. (1957) Title 9	§§427,428, 449				§456 [n.6]			§455	§455					tit.1,§§810, 811 patient or some person		§451 person aggrieved	§451 supreme		
DISTRICT OF COLUMBIA CODE (1966 Supp. V) Title 21	§§1101,1108 tit.32,§§601, 602													§1113(a) patient					

Chart IV-C. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- POST-HEARING PROCEDURES

FOOTNOTES

a. "State and Statute." For the applicability of the charted procedures and the availability of other procedures, see footnotes cited in this column, Chart IV-A.

1. In addition to the charted provision for commitment to state institutions, there is also an alternate provision for commitment to an institution operated by an agency of the United States -- Alaska, §080; Colorado, §11(6); Idaho, §330; Indiana, §§1219, 1235-1253; Kentucky, §§160, 165; Louisiana, §62; Massachusetts, §§10, 20A; Michigan, §811; Mississippi, §6909-07; New Mexico, ch. 74, art. 6, §18; Ohio, §§15, 16; Pennsylvania, §1243; South Carolina, §1001; Virginia, §73; West Virginia, §2663(1).

2. Examination is conducted: by a "designated examiner" who is "a licensed physician designated by the department [of Health and Welfare] as specially qualified...in the diagnosis of mental illness..." -- Alaska; by an "evaluation board...composed as follows: One (1) member who is a duly licensed physician of this state; one (1) member who is a qualified psychologist; and one (1) or more other members to be selected by the board of directors" -- New Mexico.

3. The Children's Colony Board is the petitioner for judicial commitment: of an "indigent" child -- Arizona; of a patient for whom facilities are available and who has been examined and found to be eligible and appropriate for commitment -- Arkansas.

4. *Cf.* DEP'T OF MENTAL HYGIENE: POLICY AND OPERATIONS MANUAL §3412 (1966): "Each patient shall be examined by a physician within 24 hours of admission and the findings recorded in the clinical file" -- California.

5. See also DEP'T OF MENTAL HYGIENE: POLICY AND OPERATIONS MANUAL §3411 (1966): "All persons admitted to a Department facility shall be informed, as far as possible, at the time of admission, of the nature of the hospital and of the reasons for admission" -- California.

6. A committed patient is under guardianship of: the Board of Commissioners of State Institutions -- Florida, §04; the Director of Health -- Hawaii, §14; the Commissioner of Revenue (unless another guardian has been appointed) -- Michigan, §§811(1), 817; the Commissioner of Public Welfare -- Minnesota, §753(2); "the head of any public hospital" -- Ohio, ch. 5123, §03; the superintendent of the State Training School (conservator of estate, unless a guardian has been appointed) -- Wyoming, tit. 3, §33.1.

7. Section 50 provides that "the head of a private hospital may and the superintendent of a state mental institution, subject...to the availability of suitable accommodations, shall receive for observation, diagnosis, care and treatment any individual whose admission is applied for under any of the following procedures: ...(3) Judicial commitment..." But see OP. ATT'Y GEN. (Aug. 8, 1963), determining that it is mandatory for the superintendent of a hospital or institution to receive judicially committed patients -- Louisiana.

8. REG. OF DEP'T OF MENTAL HEALTH No. 2, Item 3 (1955): "Promptly after admission, each newly admitted patient shall receive a physical examination and mental examination" -- Massachusetts.

9. Cf. RULES & REGS. OF DEP'T OF MENTAL HEALTH §3.04(1964): "Every patient shall be carefully examined by a member of the hospital medical staff immediately upon admission and a full record of such examination shall be made with careful note of bruises, scars, marks and possible fractures and other injuries" -- Michigan.

10. See Memorandum from Morris Hursh, Commissioner of Public Welfare, July 26, 1965, p. 2: "Effective October 1, 1965, application for admission to a state facility will be made by the county welfare department directly to the receiving institution, which will maintain its own waiting list...." -- Minnesota.

11. For information required to be furnished upon institutional admission, including a report of prior medical examination, see MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. VI, §III.B, at 44-46 (1959) -- Minnesota.

12. Habeas corpus is available, but only to challenge the jurisdiction of the committing court, including the constitutionality of the commitment statute and of the actual commitment procedure. Cf. State ex rel. Anderson v. U.S. Veterans Hospital, 268 Minn. 213, 128 N.W.2d 710 (1964) -- Minnesota.

13. Provision for appeal includes a right of further appeal to: the supreme court -- Mississippi; the Supreme Court of Appeals -- Virginia.

14. "....Upon such appeal the circuit court shall appoint an examining board to examine the person alleged to be mentally deficient. The board shall consist of at least two physicians or one physician and one psychologist. If the examining board certifies that the person is mentally deficient, the certification and order of commitment, if any, of the probate court shall be sustained. If the examining board does not certify that the person is is mentally deficient, the circuit court may set aside the certification and order of commitment, if any, of the probate court" -- Oregon.

15. Section 313 requires that "whenever a mentally retarded individual is hospitalized, the court shall enter an order of incompetency and appoint a guardian, if there be none." Under §505, instead of hospitalization, "if it is found that the interests and welfare of the person and of others in the community would better be served...or if there are no suitable accommodations available for him, the court may appoint a suitable person as guardian" -- Tennessee.

16. Section 21 provides that "the warrant of commitment, proceedings thereon, and return thereof, shall be, as near as may be, as provided for insanity matters in chapter 7 of this title." It is not clear whether this provision is intended to incorporate the provisions of tit. 64, ch. 7, for post-commitment examination [§40(A)] or habeas corpus (§49) -- Utah.

17. BRANDON TRAINING SCHOOL: ADMISSION PROCESS p. 1 (no date): "...each applicant is evaluated at Brandon by the school's pediatric consultant and psychologist in order to determine eligibility and feasibility of admission" -- Vermont.

18. "(a) In any case where commitment to a private institution is sought, the presiding justice shall before making an order of commitment, inquire and ascertain whether the private institution is a fit and proper institution to have the care of such person... (b) The person committed shall have, as a matter of right, the right to appeal from the judgement of the justice in respect to the fitness of the institution to which he may be committed, to the circuit court of the county or to the corporation court of the city in which the proceedings may be had...." -- Virginia, §71.3.

IV-D. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- DISCHARGE PROCEDURES

STATE AND STATUTE	ADMINISTRATIVE DISCHARGE			JUDICIAL DISCHARGE AND RESTORATION												
				PETITION BY					FREQUENCY RESTRICTIONS				SPECIAL PROCEEDINGS AND CRITERIA			
	Criteria	Approval of Court	Reported to Court	Patient	Interested Party	Any Person	Official or Agency	Court or Commission	First Petition	Subsequent Petitions	Special Certification by	Proceedings and Criteria Same as for Original Commitment	Examiners Appointed by Court	Notice of Hearing to	Hearing	Criteria
AAMD DRAFT ACT (no provision) [n.1]																
ALABAMA CODE(1959) Title 45	§245															
ALASKA STAT.(1962) Title 47,ch.30	§§040(b), 200,220		§§040(b), 120,220	§060	§§060,340(8) guardian,spouse, parent,adult child or next of kin		§060 peace officer	§060 superior	§060(1) (discretionary)six months after commitment	§060(2) (discretionary)one year after previous petition		§060				
ARIZONA REV.STAT.(1956) Title 8	§427															
ARKANSAS STAT.(1965 Supp.) Title 59	§309(b)		§309(b)													
CALIFORNIA WELFARE & INSTITUTIONS CODE (1965 Supp.)	§7013															
COLORADO REV.STAT.(1965 Supp.) Ch.71,art.1	§27 §28	§27	§28			§26		§26 same as commitment			§26 medical doctor		§26 two medical doctors [n.2]			§26
CONNECTICUT GEN.STAT.(1960; 1965 Supp.) Title 17	§173a				§229(a) person interested		§229(a) mental health commissioner	§229 (a) same as commitment							§229 (a)	
DELAWARE (no provision)																
FLORIDA STAT.(1960;1965 Supp.) Title 17	§05 for child				§12(2) guardian,relative, spouse,or next friend			§12(2) county judge			§12(1),(2) (optional)superintendent(competency)			§12(2) state attorney	§12(2), (3)	§12(3) (competency)
GEORGIA CODE(1965 Supp.) Title 88	§2509				§2512 relative,guardian or friend			§2512 same as commitment				§2512				
HAWAII REV.LAWS(1965 Supp.) Ch.82	§11	§11 (optional hearing)		§12	§12 parent,relative or friend			§12 appeals committee of two physicians and attorney		§12 not more than one a year					§12	§§4,12

IV-D. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- DISCHARGE PROCEDURES

STATE AND STATUTE	ADMINISTRATIVE DISCHARGE			JUDICIAL DISCHARGE AND RESTORATION												
				PETITION BY				Court or Commission	FREQUENCY RESTRICTIONS		Special Certification by	Proceedings and Criteria Same as for Original Commitment	SPECIAL PROCEEDINGS AND CRITERIA			
	Criteria	Approval of Court	Reported to Court	Patient	Interested Party	Any Person	Official or Agency		First Petition	Subsequent Petition			Examiners Appointed by Court	Notice of Hearing to	Hearing	Criteria
IDAHO CODE(1965 Supp.) Title 66	§§337,338		§§337, 338	§343	§343 guardian,parent, spouse,relative or friend			§343 probate	§343 (discretionary) six months after commitment	§343 (discretionary) one year after previous commitment		§343				
ILLINOIS STAT.(1965) Ch.91-1/2	§§10-6,8,9, 10		§10-8,9, 10	§10-2		§10-2		§10-2 circuit		§10-5 none without leave of court	§§10-2,9 physician or psychologist,or superintendent of state hospital	§10-4		§10-3 person or superintendent with whom hospitalized others as court directs	§10-3	§10-5
INDIANA STAT. (Burns, 1964;1966 Supp.) Title 22	§§1734;1814 §§1213,1223 1307,1308	[n.3]	§§1213, 1308, 1309 [n.3]			§1223 ?		§1223 same as commitment							§1223	
IOWA CODE(1965 Supp) Ch.222	§59		§59 30 days' notice	§42		§42		§42 [n.4]	§42 six months after commitment	§46 within reasonable time as determined by court				§44 superintendent of institution and parties court finds interested	§§44, 45	§43
KANSAS (no provision)																
KENTUCKY [illegible].STAT.(1963; 1966 Supp.) Ch.202	§280 §340 state institution	§280 [n.3]	§300					§360 county judge			[n.5]			[n.5]	§360 [n.5]	
LOUISIANA REV.STAT.(1956; 1965 Supp.) Title 28	§96(G) §97	§96(G)		§98				§98 same as commitment			§98 (optional)written consent of superintendent or Dep't of Hospitals			§98 superintendent and Dep't of Hospitals	§98 (optional, if no admin. consent)	§§98,171(7)
MAINE REV.STAT.(1964) Title 34	§2156				§2157 guardian,spouse, parent,relative or friend			§2157 same as commitment	§2157 (discretionary) six months after commitment	§2157 (discretionary) one year after previous petition		§2157				
MARYLAND CODE(1964) Art.59 [n.6]				§21		§21	§21 superintendent,chief officer or physician in charge of institution	§21 law court of county or Baltimore City		§21 if within one year from previous hearing,affidavits of person or persons showing mental condition					§21 court or jury	§21 (sanity)

IV-D. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- DISCHARGE PROCEDURES

STATE AND STATUTE	ADMINISTRATIVE DISCHARGE			JUDICIAL DISCHARGE AND RESTORATION												
				PETITION BY					FREQUENCY RESTRICTIONS				SPECIAL PROCEEDINGS AND CRITERIA			
	Criteria	Approval of Court	Reported to Court	Patient	Interested Party	Any Person	Official or Agency	Court or Commission	First Petition	Subsequent Petitions	Special Certification by	Proceedings and Criteria Same as for Original Commitment	Examiners Appointed by Court	Notice of Hearing to	Hearing	Criteria
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§§66,66A,89,89A			§91		§91		§91 justice of supreme judicial court						§92 superintendent or manager of institution and others as justice considers proper	§92 if cause shown (jury optional)	
	§§67,67A	§§67,67A														
	§89	§89			§89A parent,guardian, relative or friend			§89A probate						§89A as prescribed by court	§89A	§§89A,89B
MICHIGAN STAT.ANN.(1956; 1965 Supp.) Title 14	§§825,825(1)		§829(1) [n.3,7]					§825 probate			[n.5]			n.5]	§825 [n.5]	
				§829				§829 same as commitment			§829 2 physicians,or superintendent and staff physician			§829 superintendent and others as court directs	§829	§829
MINNESOTA STAT.(1965 Supp) Ch.525						§78(1)	§78(1) commissioner of public welfare	§78(1) same as commitment					§78(3) two doctors of medicine or two persons skilled in mental deficiency	§78(1),(2) as court directs; if not petitioner, to commissioner and county attorney	§78(1),(2)	§78(2) (capacity)
							§78(5) commissioner of public welfare	§78(5) same as commitment						§78(6) as court directs	§78(6)	§78(5) (guardianship)
MISSISSIPPI CODE(1952) Title 25	§§6916,6919			§6909-08	§6909-08 relative	§6909-08		§6909-08 chancery (chancellor)						§6909-08 director or official of institution	§6909-08	§6909-08
MISSOURI (no provision)																
MONTANA REV.CODES(1965) Title 80	§2309				§2309(2) if patient,parent or guardian requests discharge, by dep't of institutions			§2309(2) district							§2309 (2)	
NEBRASKA REV.STAT.(1965 Supp.) Ch.83	§109															
NEVADA (no provision)																
NEW HAMPSHIRE REV.STAT.(1964) Ch.171	§§5,20							§20 superior								
NEW JERSEY (no provision)																

IV-D. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- DISCHARGE PROCEDURES

STATE AND STATUTE	ADMINISTRATIVE DISCHARGE			JUDICIAL DISCHARGE AND RESTORATION												
				PETITION BY					FREQUENCY RESTRICTIONS				SPECIAL PROCEEDINGS AND CRITERIA			
	Criteria	Approval of Court	Reported to Court	Patient	Interested Party	Any Person	Official or Agency	Court or Commission	First Petition	Subsequent Petitions	Special Certification by	Proceedings and Criteria Same as for Original Commitment	Examiners Appointed by Court	Notice of Hearing to	Hearing	Criteria
NEW MEXICO STAT.(1965 Supp) Ch.34,art.3								§7(A) same as commitment			§7(A) recommendation of hospital evaluation board					§7(A)
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.)	§§124(8); 133(1),(2)							§133(1) court of record			[n.5]			[n.5]	§133(1) [n.5]	
NORTH CAROLINA (no provision)																
NORTH DAKOTA CENTURY CODE (1960;1965 Supp.) Title 25	§04-08			§03-17	§03-17 guardian,parent, spouse,relative, or friend			§03-17 county mental health board	§03-17 six months after commitment	§03-17 one year after previous petition		§03-17				
OHIO REV.CODE(1965 Supp.) Ch. 5122	§§21,23		§21				§25 non-state facility,or court	§25 same as commitment							§25	§25
				§36	§36 guardian		§36 head of hospital or agency,or court	§36 same as commitment	§36 six months after commitment	§36 one year after previous request					§36	§36 (competency)
OKLAHOMA (no provision)																
OREGON REV.STAT.(1965) Ch.427	§120		§120 [n.3]													
PENNSYLVANIA STAT.ANN.(1954 1965 Supp.) Title 50	§§1205,1301 (4) §§1302, 1303,1305	§§1205, 1301(4) (optional)		§1304 (a)		§1304 (a)		§1304(a) same as commitment or court of common pleas			§1304(a) physician				§1304 (a)	§1304(a)
RHODE ISLAND GEN.LAWS(1956) Title 26,ch.5	§§12,17			§13		§13		§13 same as commitment							§13	§12
SOUTH CAROLINA CODE OF LAWS (1962) Title 32	§§990,1020, 1031,1032, 1091		§1032 (certificate of competency)		§1045 guardian ad litem or committee			§1045 probate					§1045 [n.8]		§1045	§1045 (competency)
SOUTH DAKOTA CODE(1960 Supp.) Title 30	§0405							§0112 county judge	§0112 six months after admission	§0112 not oftener than once in six months			§0112 [n.9]		§0112 (optional)	§0112

IV-D. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- DISCHARGE PROCEDURES

STATE AND STATUTE	ADMINISTRATIVE DISCHARGE			JUDICIAL DISCHARGE AND RESTORATION												
				PETITION BY				Court or Commission	FREQUENCY RESTRICTIONS		Special Certification by	Proceedings and Criteria Same as for Original Commitment	SPECIAL PROCEEDINGS AND CRITERIA			
	Criteria	Approval of Court	Reported to Court	Patient	Interested Party	Any Person	Official or Agency		First Petition	Subsequent Petitions			Examiners Appointed by Court	Notice of Hearing to	Hearing	Criteria
TENNESSEE CODE(1966 Supp) Title 33	§510		§§314,510	§315				§315 same as commitment					§315 [n.8]		§315	§315 (competency)
TEXAS REV. CIV. STAT. (Vernons, 1966 Supp.)	art.3871a; art.3871b, §16		art.3871a													
UTAH CODE(1961) Title 64,ch.8	§15															
VERMONT STAT.ANN.(1959) Title 18	§§2756,2757			[n.10]	§2757 interested person			§2757 superior judge							§2757	§2757
VIRGINIA CODE(1953;1966 Supp.) Title 37	§§90,210 §§94,126, 135.1,223		§90					§94 (not specified)								
WASHINGTON (no provision)																
WEST VIRGINIA CODE(1961;1965 Supp.)	§§2667,2668, 2669 §2679		§§2667, 2669 (optional)	§2662	§2662 spouse,relative, guardian or friend			§2662 same as commitment	§2662 six months after commitment	§2662 one year after previous petition		§2662				
WISCONSIN STAT.(1965) Ch.51	§§22(5),31 §11(7) [n.11]		§22(5) §11(7) [n.11]	§11(1)	§11(1) guardian,relative or friend		§11(7) dep't of public welfare	§11(1) court of record		§11(8) discretionary any time; mandatory one year after preceding one		§11(4),(5)	§11(3) two physicians	§11(4) petitioner,hospital,patient's guardian,and (optional)patient's relatives	§11(4)	§11(5)
WYOMING STAT.(1957) Title 9	§463 §465	§463 (hearing)														
DISTRICT OF COLUMBIA CODE(1966 Supp.V) Title 21					§1113 relative or friend	§1113 citizen	§1113 sup't of institution or Dep't. of Public Welfare	§1113 same as commitment		§1113 within reasonable time in court's discretion				§1113 sup't of institution; other persons, relatives and friends as court thinks proper	§1113	§1113

Chart IV-D. JUDICIAL COMMITMENT OF THE MENTALLY RETARDED -- DISCHARGE PROCEDURES

FOOTNOTES

1. There is no provision for original judicial commitment, but there are provisions for discharge applicable to patients whose original non-judicial hospitalization has subsequently been extended by judicial commitment -- A.A.M.D. Draft Act, art. 8, §§h, i (1964).

2. At least one of the examiners appointed by the court must not be associated with the institution where the patient is confined -- Colorado.

3. Upon receipt of a certificate of discharge or recovery from the institution, the committing court must conduct special restoration proceedings -- Indiana, §1308; Kentucky (if patient had been declared incompetent), §280(2)(b); Michigan, §829(1); Oregon, §120.

4. "If the commitment be to a private institution, the petition shall be filed with the court ordering such commitment. If the commitment be to a [state] hospital-school, the petition shall be filed in the proper court of the county where the institution is situated" -- Iowa.

5. If the institution superintendent or staff is unwilling to discharge a patient upon request and so certifies in writing, giving reasons therefor, the court may, upon such certificate and an opportunity for a hearing thereon being accorded the superintendent or staff, order the discharge of such patient -- Kentucky, §360; Michigan, §825; New York, §133(1).

6. The charted procedure seems applicable to patients committed by a juvenile court pursuant to the procedure of art. 26 tabulated in Charts IV-A,B,C; it is also applicable to patients hospitalized pursuant to procedures tabulated in Charts II, III -- Maryland.

7. See also RULES & REGS. OF DEP'T OF MENTAL HEALTH § 3.12(B)(1964): "Whenever any patient shall be finally discharged, the medical superintendent shall report such change in status to the probate court of commitment and indicate in such report which...factors have brought about such discharge..." -- Michigan.

8. At the hearing: "witnesses shall be examined, including two licensed physicians who shall be registered by the [Mental Health] Commission as designated examiners" -- South Carolina; "there shall be testimony from at least two licensed physicians who have examined the individual" -- Tennessee.

9. "...such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician, and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them they shall proceed to the Hospital [and School] and have a personal interview with such person, so managed as to prevent him or her, if possible, from suspecting its object; and they shall make any inquiries and examination they may deem necessary and proper of the officers and records of the Hospital [and School], touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the county judge making the appointment the result of their examinations and inquiries. Such report shall be accompanied by a statement of the case and signed by the Superintendent...." -- South Dakota.

10. The patient is presumably able to apply as a "person considered by such judge legally interested" (§2757) -- Vermont.

11. "When a proceeding for retrial or re-examination is not pending in a court of record and a jury trial is not desired by the persons authorized to commence such proceeding, the department [of Public Welfare] may, on application, determine the mental condition of any patient committed to any institution under this chapter, and its determination shall be recorded in the county court of the county in which the patient resides or from which he was committed, and such determination shall have the same effect as though made by the county court...." -- Wisconsin.

IV. PROTECTIONS AND RIGHTS OF INSTITUTIONALIZED PATIENTS

As pointed out by the Task Force on Law of the President's Panel on Mental Retardation, "the need of a mentally retarded person to have his personal rights protected does not end with his transfer to the custody of the superintendent of an institution..."[1] Often, however, statutory recognition of the rights of the retarded does not extend beyond this point. Every state's statutes contain one or more provisions which authorize and regulate the institutionalization of retarded persons, but statutes which implement any given right or provide any given protection for institutionalized retardates are in the minority. Among the factors responsible for this situation is certainly the relative difficulty of drafting legislation governing patients' rights. Although it is no longer believed that all retarded persons are incapable of exercising their legal rights, neither is it claimed that all retarded patients should retain the full complement of these rights. Ideally, therefore, patients' rights should be determined by individual and expert judgments. Implementation of this principle requires designation of the appropriate authorities to make such judgments. It seems preferable for questions regarding a patient's competency to perform jural acts, such as executing a contract or a will, to be decided by a court or other legal authority. At the other extreme, the exercise of more personal rights, such as corresponding or receiving visitors, must necessarily be subject to considerable discretion on the part of institutional authorities. For such personal rights, as well as special rights of a retarded person _qua_ patient to receive treatment and training, existing statutory provisions usually set forth only minimal standards within which administrative discretion may be exercised.

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[1] _Report of the Task Force on Law, The President's Panel on Mental Retardation_ 30 (Washington, 1963).

This allocation of responsibility may produce problems when, especially in overcrowded and understaffed institutions, decisions regarding patients' exercise of their rights are further delegated to subordinates. To meet such problems many institutions for the retarded, as well as many state agencies responsible for supervising the institutions, have promulgated administrative regulations for more explicit guidance of institutional practices. As a result, legal protections of institutionalized retardates frequently have more significant regulatory components than legal procedures for institutional admission.

It should also be noted that state legislation which does cover patients' rights is predominately designed for the mentally ill. Statutory provisions for mentally retarded patients are almost always also applicable to mentally ill patients; indeed, the typical provisions in most categories are those patterned after the "Draft Act Governing Hospitalization of the Mentally Ill."[2] The inclusion or exclusion of mentally retarded patients in these provisions often seems to be the incidental result of a state's organization of its mental institutions and its statutes, rather than the deliberate result of legislative decision. If institutions for both the mentally ill and the mentally retarded are administered by a single state agency, and if the state statutes are arranged according to such agencies, it is most probable that any statutory protections are applicable to both classes of patients;

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[2] National Institute of Mental Health: _A Draft Act Governing Hospitalization of the Mentally Ill_ (Washington, U.S. Public Health Service Pub. No. 51, 1952).

otherwise, provisions for patient's rights are frequently confined to the mentally ill.[3] Because few provisions are uniquely applicable to the mentally retarded, and because provisions applicable to the mentally ill are adequately treated elsewhere,[4] individual rights of patients are only briefly discussed in the following sections.

A. Confidentiality

Any need for special insulation of information regarding retarded patients has surely diminished as popular understanding of mental retardation has increased. On the other hand, there appears to be no reason why institutional records of retarded patients should not be accorded the same protections of confidentiality as apply to the records of non-mental institutions or hospitals. The statutes of 22 states generally provide this degree of protection for the records of state institutions and agencies for the retarded.[5] Statutory provisions differ among the jurisdictions primarily in their expression of various exceptions to the requirement of confidentiality, but many of these exceptions may be implied even in statutes which omit them.

B. Communication

Rights of communication of institutionalized patients are chiefly those of correspondence and visitation. Both privileges are recognized by statute in ten states; the statutes of eight states mention only correspondence, and the Vermont statutes affect only visitation.[6] In addition to providing basic freedoms and specifying permissible restrictions, perhaps the most important features of these statutes are their guarantees of patients' access to state agencies and officials,[7] courts, and attorneys.[8] Such provisions are essential to safeguard against improper institutionalization and to effectuate any other rights of patients. Also of special significance are the few provisions for a patient to be examined by an independent physician.[9]

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[3] For such provisions applicable only to mentally ill patients, see note 4, Chart V-A; note 4, Chart V-B; note 7, Chart V-D; notes 3, 10, Chart V-E.

[4] See especially Ch. 5, "Rights of Hospitalized Patients," in Lindman and McIntyre (eds.): The Mentally Disabled and the Law 142-182 (Univ. Chicago Press, 1961).

[5] See Chart V-A.

C. Training

Particular types of education or training for institutionalized retardates are designated in the statutes of 26 jurisdictions.[10] Most frequently mentioned are "industrial," "manual," "mechanical," or "vocational" training, and occasionally "agricultural" training is included. Several statutes provide for "academic," "intellectual," or "scholastic" education, and a few refer to "physical," "moral," or "social" training.

In addition to these specifications, many statutes indicate a general purpose of "training" in provisions which authorize institutional admission, or which establish state institutions or agencies for the retarded. Few statutes, however, express a definite right of retarded patients to be trained to their maximum capacity so that they may, if at all possible, return to the community.

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[6] See Chart V-B.

[7] See "No Restrictions on Correspondence with Officials" column, Chart V-B.

[8] Eight states forbid restrictions on patients' correspondence with attorneys, and four have special provisions for patients to be visited by attorneys.

[9] See note 7, Chart V-B.

[10] See "Education and Training" column, Chart V-C.

Seventeen states provide for the employment of patients while they are either in residence at an institution, participating in a "colony" or "sheltered workshop" program, or conditionally released.[11] Most of these provisions are merely authorizations of the indicated activities, but a few take other forms. In Louisiana and Pennsylvania, a patient has a "right to be employed at a useful occupation," depending on his condition and available institutional facilities. In Oregon a patient may be required to perform "reasonable work" for the state. Statutes of eleven states deal with compensation for the patient's employment, and sometimes also the allocation of such compensation between the patient or his dependents and the institution or the state.[12]

D. Treatment

The use of mechanical restraints is regulated by statute in ten states, and by administrative regulation in at least as many.[13] Statutory provisions specify that restraint may be used only when necessary for the "medical needs" or "welfare" of the patient, or for the conduct of the institution. Most provisions require that the restraint order be signed by a physician and be made a part of the patient's clinical record or the institution's restraint record. Many of the administrative regulations on this subject cover not only mechanical restraints, but also seclusion or segregation and occasionally "chemical restraint."

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[11] See "Employment - Activities" column, Chart V-C.

[12] See "Employment - Compensation" column, Chart V-C.

[13] See "Mechanical Restraints" columns, Chart V-D.

As additional safeguards against maltreatment of patients, 18 statutes provide a general standard of "humane," "adequate," or "appropriate" institutional care;[14] fourteen specially provide for the investigation of patients' complaints by the state agency with supervision over mental institutions, or some other authority;[15] and 19 establish criminal penalties for abuse or neglect of patients.[16]

Twelve statutes deal specially with major medical treatment, usually surgery, given to institutional patients.[17] For non-emergency situations, it is generally provided that the patient's consent is necessary unless he is considered incompetent by virtue of minority, adjudication, commitment, or the opinion of institutional authorities. In the latter cases, the consent of his guardian, parent or other relatives is required, but if they are unavailable the consent of an official of the institution or the state agency may be substituted in most states. For emergency situations more liberal provisions are made for such substituted consent.

E. Periodic Review

Periodic examinations provide opportunities for assessing changes in the condition of patients, and thus for assuring that they will not be institutionalized longer than necessary, and that they will be properly placed and treated while institutionalized. Statutes of eleven states require institutions for the retarded to conduct periodic reviews.[18] Most of these provisions leave the frequency of examinations to the administrative discretion of the institution, or merely require examinations "as frequently as practicable." Some, however, specify that patients must be examined at least every twelve or six months. The Oregon statute authorizes examination of a patient upon the request of his relative or guardian.[19] The statutes generally do not prescribe the nature or scope of periodic examinations.

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[14] See "Maltreatment -- Standard of Care" column, Chart V-D.

[15] See "Maltreatment -- Investigation of Complaints by --" column, Chart V-D.

[16] See "Maltreatment -- Criminal Sanction" column, Chart V-D.

[17] See "Major Medical Treatment" columns, Chart V-D.

At the present time, no jurisdiction has adopted provisions for automatic and periodic judicial review as recommended by the Task Force on Law of the President's Panel on Mental Retardation:[20]

> ...[P]eriodic court review should be mandatory in the case of all non-voluntarily institutionalized adults. Judicial review of commitment should be required in the case of any retarded person living in an institution at the time he reaches the age of 21, unless he clearly indicates his desire to remain on a voluntary basis -- in which case the court should make a finding to that effect. After the age of 21, we believe that there should be judicial review of the need for continuing commitment every two years....

F. Conditional Release

Conditional release procedures are not special protections or rights of institutionalized patients in the same sense as the provisions discussed in previous sections. They are considered here primarily because of their conceptual relationship to provisions for periodic examination or review, but they are perhaps more akin to provisions for administrative discharge. A non-voluntary patient's administrative discharge is usually, by customary practice if not express regulation, dependent upon his completion of a period of conditional release.[21] As prerequisites for discharge, these procedures constitute an important component of the right of qualified patients to terminate institutionalization. Also, since conditional releases are frequently the final, transitional steps in an institution's habilitation program, they are significant to a patient's right to education and training.

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[18] See "Periodic Examination or Review" columns, Chart V-E.
These provisions should be considered in conjunction with requirements for examination at the time of admission to an institution. See "Admission Criteria -- Mental Examination" columns, Charts II, III, IV-C.

[19] Compare the provisions for examination by independent physicians, cited note 7, Chart V-B.

[20] *Report of the Task Force on Law, The President's Panel on Mental Retardation* 3 (Washington, 1963).
The recommendation is more broadly phrased in *A Proposed Program for National Action to Combat Mental Retardation: Report of the President's Panel on Mental Retardation* 222 (Washington, U.S. Gov't Printing Office, 1962): "There should be judicial review every two years of the need for continued institutional care for all retarded adults, whatever their original type of admission. There should always be a review when a mentally retarded person reaches the age of 12 [21?]." (All capitalized in original.)

The statutes of all but six jurisdictions contain one or more provisions for the conditional release of retarded patients.[22] The procedures are variously designated "release," "parole," "placement," "leave," "visit," or other terms, but all have certain features in common. The patient's release from the institution is subject to his adjustment to external circumstances and his compliance with any special conditions prescribed by the institution. He may be returned to the institution without the formalities of a new admission procedure because he remains in the constructive, legal custody of the institution until finally discharged.

Authorities authorized to grant conditional releases, as well as criteria specified for such releases, are generally similar to those of administrative discharge provisions. Patients are usually released either to the care of a "private," "family," or "boarding" home, or to the custody of relatives, guardians, or friends. In those statutes which specify the period of release, it is most often required that the patient be discharged or his case reviewed after one year, although the specified periods may be shorter, longer, or "indefinite."

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[21] See Sections III.C.3. and III.D.4.a. supra.

[22] See "Conditional Release or Parole" columns, Chart V-E.

V-A. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- CONFIDENTIALITY

STATE AND STATUTE	Information or Records Protected	DISCLOSURE EXCEPTIONS					Criminal Sanction
		Consent of	Necessary to Carry Out Other Statutory Provision	Court Order	Information as to Patient's Current Medical Condition to	Other Access by or Disclosure to	
AAMD DRAFT ACT (no provision)							
ALABAMA (no provision)							
ALASKA STAT. (1962) Title 47, ch.30 [n.1]	§260(a) certificates, applications, records, reports (other than court order) identifying patient, and clinical information	§260(a)(1) patient or guardian; if patient is minor, parent or guardian	§260(a)(2)	§260(a)(3) [n.2]	§260(b) patient's family		§260(c) misdemeanor; fine not more than $500, or imprisonment not more than one year, or both
ARIZONA (no provision)							
ARKANSAS (no provision)							
CALIFORNIA (no provision) [n.3]	[n.3]	[n.3]			[n.3]	[n.3]	
COLORADO (no provision)							
CONNECTICUT (no provision)							
DELAWARE (no provision)							
FLORIDA (no provision) [n.4]							
GEORGIA CODE (1965 Supp.) Title 88 [n.1]	§518 records, documents, and information concerning patient, not part of court record	§518 superintendent, if adequate reason shown in written request	§518			§518 hospital or health dep't personnel	
HAWAII (no provision)							
IDAHO CODE (1965 Supp.) Title 66	§348(a) certificates, applications, records, and reports identifying patient	§348(a)(1) patient or guardian; if patient is minor, parent or guardian	§348(a)(2)	§348(a)(3) [n.2]	§348(b) patient's family, relatives or friends	§348(b) title abstractors or insurers, lawyers, physicians, or hospital personnel	§349 misdemeanor; fine not more than $500 and imprisonment for not more one year
ILLINOIS STAT. (1965) Ch.91-1/2	§12-3 state hospital records	[n.5]				§12-3 Director of Dep't of Mental Health, State's Attorney, patient's attorney, or court [n.6]	
INDIANA (no provision)							
IOWA CODE (1949; 1965 Supp.) Ch.218	§21 patients' records of board of control of state institutions	§22 board of control		§22		§22 board of control members and personnel	

V-A. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- CONFIDENTIALITY

STATE AND STATUTE	Information or Records Protected	DISCLOSURE EXCEPTIONS					Criminal Sanction
		Consent of	Necessary to Carry Out Other Statutory Provisions	Court Order	Information as to Patient's Current Medical Condition to	Other Access by or Disclosure to	
KANSAS (no provision) [n.4]							
KENTUCKY REV.STAT.(1963) Ch.210	§235 applications,certifications,records and reports which identify patients	§235(1) patient or guardian	§235(2) statutes or regulations	§235(4) [n.2]	§235 patient's family or friends	§235(3) U.S. agencies	
LOUISIANA (no provision)							
MAINE (no provision) [n.4]							
MARYLAND (no provision) [n.7]	[n.7]	[n.7]		[n.7]	[n.7]	[n.7]	
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§13 registry of mental defectives maintained by Dep't of Mental Health					§13 public officials and others with authority over patient,or charitable corporations	
MICHIGAN (no provision) [n.8]	[n.8]			[n.8]			
MINNESOTA STAT.(1959) Ch.246	§13 patients' records	§13 comm'r of public welfare		§13			
MISSISSIPPI (no provision)							
MISSOURI (no provision)							
MONTANA (no provision)							
NEBRASKA REV.STAT.(1965 Supp.) Ch.83	§109 patients' records			§109		§109 Dep't of Public Institutions, Legislative Committee,Governor,and U.S. agency for benefit claims	
NEVADA REV.STAT.(1963) Ch.433	§123 information concerning patients					§123 by regulations of sup't	
NEW HAMPSHIRE (no provision) [n.9]	[n.9]	[n.9]			[n.9]	[n.9]	
NEW JERSEY STAT.(1965 Supp) Title 30,ch.4	§24.3 certificates,applications,records, and reports identifying patient	§24.3(1) patient or guardian;if patient is minor,parent or guardian	§24.3(2)	§24.3(3) [n.2]	§24.3 patient's relative, friend,physician or attorney		
NEW MEXICO (no provision) [n.4]							

V-A. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- CONFIDENTIALITY

STATE AND STATUTE	Information or Records Protected	DISCLOSURE EXCEPTIONS					Criminal Sanction
		Consent of	Necessary to Carry Out Other Statutory Provision	Court Order	Information as to Patient's Current Medical Condition to	Other Access by or Disclosure to	
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.)	§§20;34(9),(9a) patients' records;photograph and fingerprints of patients 16 or over	§§20;34(9),(9a) comm'r of mental hygiene		§§20;34(9),(9a)		§§20,34(9) comm'r,medical director,and other personnel of institution or dep't of mental hygiene	
NORTH CAROLINA GEN.STAT.(1964) Ch.122	§8.1 information,record,report,history or memorandum made in treatment of patient			§8.1			
NORTH DAKOTA (no provision) [n.4]							
OHIO REV.CODE(1954) Ch.5119 [n.10]	§27 patients' records of dep't of mental hygiene and correction	§27 dep't of mental hygiene and correction		§27		§27 employees of dep't of mental hygiene and correction	
OKLAHOMA (no provision) [n.4,11]	[n.11]	[n.11]		[n.11]		[n.11]	
OREGON REV.STAT.(1965) Ch.179	§495 patients' medical histories,clinical records,charts,reports,and other accounts [n.12]	§495 State Board of Control; patient,or if incompetent,guardian [n.12]		§495	[n.12]	[n.12]	
PENNSYLVANIA (no provision)							
RHODE ISLAND GEN.LAWS(1957) Title 40,ch.2	§1 patients' records of Dep't of Social Welfare [n.13]	§1 director of social welfare		§1		§1 personnel of Dep't of Social Welfare	
SOUTH CAROLINA CODE OF LAWS (1962) Title 32	§§1022,1023 certificates,applications,records and reports identifying patient	§1022(1) patient or guardian;if patient is minor,parent or guardian	§1022(2)	§1022(3) [n.2]	§1022 patient's relative or representative	§1022(4) state and federal agencies and law enforcement agencies	§1022 misdemeanor;fine not more than $500, or imprisonment for not more than one year, or both
SOUTH DAKOTA CODE(1939) Title 30	§0412 lists of mentally retarded persons maintained at marriage license agencies						
TENNESSEE CODE(1966 Supp.) Title 33	§306(b),(j) records of patient's care and treatment;petitions,applications,certificates,records and reports identifying patient	§306(b),(j)(1) patient or guardian;if patient is minor,parent or guardian	§306(j)(2)	§306(j)(3) [n.2]	§306(j) patient's family members,relatives or friends	§306(b) patient's attorney or physician	§306(j) fine not more than $500 or imprisonment not exceeding one year,or both
TEXAS (no provision) [n.4,14]	[n.14]						
UTAH (no provision) [n.4]							

STATE AND STATUTE	V-A. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- CONFIDENTIALITY						
	Information or Records Protected	DISCLOSURE EXCEPTIONS					Criminal Sanction
		Consent of	Necessary to Carry Out Other Statutory Provision	Court Order	Information as to Patient's Current Medical Condition to	Other Access by or Disclosure to	
VERMONT (no provision)							
VIRGINIA (no provision) [n.15]	[n.15]					[n.15]	
WASHINGTON REV.CODE(1962) Title 72,ch.01	§290 patients' records of dep't of institutions	§290 director of dep't of institutions				§290 personnel of dep't of institutions	
WEST VIRGINIA CODE(1965 Supp)	§2652 names of patients	§2652 director of mental health		§2652			
WISCONSIN STAT.(1965)	ch.48,§78 patients' records and information of dep't of public welfare			ch.48,§78		ch.48,§78 social welfare or law enforcement agencies	
	ch.51,§30 court files and records			ch.51,§30			
	ch.885,§21(1) information of physician or surgeon	ch.885,§21(1)(d) patient or representative	ch.885,§21(1)(b) lunacy inquiries			ch.885,§21(1)(e) so patient can obtain insurer or gov't agency benefit or pension	
WYOMING (no provision) [n.4]							
DISTRICT OF COLUMBIA (no provision) [n.4]							

Chart V-A. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- CONFIDENTIALITY

FOOTNOTES

1. The charted provisions for the mentally ill are also applicable to the mentally retarded because mental retardation is specifically included in the definition of mental illness [see Chart I-A] -- Alaska, Georgia ("when the mentally retarded person is incapable thereby of making a satisfactory adjustment outside of a psychiatric hospital").

2. Confidential information may be disclosed "as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest" -- Alaska, Idaho, Kentucky, New Jersey, South Carolina, Tennessee.

3. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL §3210 (April, 1966): "....Personal information and medical records pertaining to individual patients are confidential. Clinical information may be provided if written consent of the person legally authorized to give consent is obtained..... Medical opinions as to the patient's condition and ultimate prospects may be furnished to friends and relatives by the appropriate ward doctor when deemed advisable."

   Id. §3210.1: "Medical record information may be released to licensing agencies without the patient's consent, when requested for a judgment on license suspension. ...."

   Id. §3210.2: "In order to inform patients of Department procedures, and to forestall possible future legal actions, it shall be a responsibility of each facility to fully inform the patient and to obtain written consent whenever possible before releasing medical information in support of benefit claims. ...."

   Id. §3210.3: "Department staff shall cooperate with the U.S. Secret Service in making available patient information, insofar as confidential patient-physician relationships allow....." -- California.

4. There is no provision for mentally retarded patients, but there are provisions applicable to the mentally ill -- FLORIDA STAT. ch. 394, §08(1960); KANSAS STAT. ch. 59, §2931(1965 Supp.); MAINE REV. STAT. tit. 34, §2256 (1964; 1966 Supp.), which may be made applicable to the mentally retarded by DEP'T OF MENTAL HEALTH & CORRECTIONS: DIRECTIVE No. XVI (May 21, 1965); NEW MEXICO STAT. ch. 34, art. 2, §17 (1965 Supp.); NORTH DAKOTA CENTURY CODE tit. 25, ch. 03, §22 (1960); OKLAHOMA STAT. tit. 43A, §§14(13), 18(13)(1965 Supp.)(formerly also applicable to mentally retarded patients); TEXAS REV. CIVIL STAT. art. 5547, §87 (Vernon 1958); UTAH CODE tit. 64, ch. 7, §50 (1953); WYOMING STAT. tit. 25, §74 (1965 Supp.); D.C. CODE tit. 21, §562 (1966 Supp.V).

5. Except for disclosure to the specially authorized persons and agencies, "information shall be given only upon the written consent of a patient who was committed as [mentally ill]..., or who was admitted on voluntary application, or discharged patients possessing civil rights. The written consent of the nearest of kin shall be required in all other cases" [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 8.01(5)(June 10, 1965)] -- Illinois.

6. In addition to the persons and agencies authorized by statute to examine confidential records, regulations provide that "clinical record data may be provided to the Veterans Administration, Railroad Retirement Board, and the Social Security Administration on the condition that it be held as strictly confidential" [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 8.01(4) (June 10, 1965)] -- Illinois.

7. Regulations of Rosewood State Hospital provide for the classification of confidential and nonconfidential information, the release of information without authorization to various persons and agencies, the authorization required for release of confidential information to other parties, and the release or production of confidential information on court order or subpoena -- Maryland.

8. RULES & REGS. OF DEP'T OF MENTAL HEALTH §7.4 (1964): "It is essential that material in patient records be considered as privileged information obtained, in part, through a physician-patient relationship and they cannot be opened for public scrutiny. In the instance where it is necessary for patient files to be made available in connection with legal action, it is permissible to allow a medical staff member to testify in private chambers with respect to certain materials which should not be disclosed in open court" -- Michigan.

9. DEP'T OF HEALTH, SAFETY, & SANITATION, LACONIA STATE SCHOOL: INFORMATION CONCERNING RESIDENTS (no date): "Information about residents in the Laconia State School should be given out to only blood relatives, guardians, and Official Agents. Other individuals are not entitled to information unless the closest relative or guardian of the resident in question authorizes us in writing" -- New Hampshire.

10. In addition to the charted provisions, ch. 5122, §31, provides for the confidentiality of "all certificates, applications, records, and reports... identifying a patient or former patient or individual whose hospitalization has been sought under Chapter 5122." This provision may be made applicable to mentally retarded patients by ch. 5125, §25 -- Ohio.

11. DEP'T OF PUBLIC WELFARE: POLICIES & PROCEDURES; STATE SCHOOLS FOR THE MENTALLY RETARDED at 3 (Oct. 1, 1964): "'Case record' or 'medical record' information is considered confidential and is not to be divulged except for purposes directly related to the treatment program for the particular pupil. .... Information of an intimate or personal nature about the pupil or the pupil's parents should not be discussed except in furtherance of the treatment program for the particular pupil.... Neither is the identity of the pupils or the parents to be divulged, except at the discretion or with special permission of the Superintendent of the state school. Control and custody of the case record rests with the Superintendent. .... It is essential that material in pupil records be considered as privileged information obtained, in part, through a physician - patient relationship, and not to be opened for public

scrutiny. The Superintendent shall immediately notify the Director of Public Welfare where notice of legal process has been served upon any officer of the state school or pupil so that legal advice may be sought. ...." -- Oklahoma.

12. FAIRVIEW HOSPITAL & TRAINING CENTER: STANDARD POLICY INSTRUCTION No. 501 (Nov. 15, 1964): "(1) Patients' records will be treated as privileged communications, as is customary in the medical profession, and the contents will be divulged, verbally, to persons and agencies outside of the institution only as is considered prudent and necessary by professional staff to further the treatment or proper disposition of patients." Section 2 provides special regulations for the release of information to "Official Law Enforcement Agencies," "Physicians," "Official Social Agencies," "Schools and U.S. Armed Forces," and "Insurance Companies." Section 3 provides that all other requests for information "must be accompanied by a signed release from the parent or guardian or be referred to the Superintendent for decision..." "(4) Parents or legal guardians are entitled to information concerning persons for whom they are responsible and the restrictions covered herein do not apply to such individuals" -- Oregon.

13. LADD SCHOOL: INFORMATION ON PROCEDURES REQUIRED OF EMPLOYEES at 10 (Jan. 1965): "Ethics and good sense are required of all employees in this institution in the matter of discussing with others those who are entrusted to our care. ... Their names, their records, and their daily behavior cannot and must not be brought into discussions with outsiders. The parents and the child have a right to that privacy, protection, and consideration" -- Rhode Island.

14. There is no provision specifically applicable to mentally retarded patients, but a general requirement of confidentiality may be inferred from TEXAS REV. CIVIL STAT. art. 5547-202, §2.23 (Vernon 1966 Supp.): "(a) Any person, hospital, sanitorium, nursing or rest home, medical society, or other organization may provide information, interviews, reports, statements, memoranda, or other data related to the condition and treatment of any person to the State Department of Mental Health and Mental Retardation, medical organizations, hospitals and hospital committees, to be used in the course of any study for the purpose of reducing mental disorders and disabilities.... (c) The identity of any person whose condition or treatment has been studied shall be kept confidential and shall not be revealed under any circumstances...." -- Texas.

15. DEP'T OF MENTAL HYGIENE & HOSPITALS: MANUAL OF INSTRUCTIONS FOR NURSING SERVICE PERSONNEL Reg. No. 5, at 21 (1965): "Employees must not discuss patients in their presence or away from the hospital. All information concerning patients should be kept confidential except when it is necessary to pass this information on to the proper hospital staff" -- Virginia.

V-B. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- COMMUNICATION

STATE	CORRESPONDENCE								VISITATION				
		Restrictions				No Restrictions on Correspondence with				Restrictions			
AND STATUTE	General Freedom	Approval by	Criteria	Censorship	Record	Officials	Others	Writing Materials Furnished	General Freedom	Approval by	Criteria	Record	No Restriction on Visits by
AAMD DRAFT ACT (1964)	art.8,§e parent or guardian may communicate and authorize communications with others		art.8,§e orderly operation of facility						art.8,§e parent or guardian may visit and authorize visits by others		art.8,§e orderly operation of facility		
ALABAMA (no provision)													
ALASKA STAT.(1962) Title 47,ch.30 [n.1]	§150(a)(1) to communicate by sealed mail or otherwise with persons and agencies in or out of hospital	§150(a) head of hospital	§150(a) rules and regulations of hospital; medical welfare of patient		§150(c) patient's clinical record	§150(b) Dep't of Health & Welfare, governor, and committing court			§150(a)(2) to receive visitors	§150(a) head of hospital	§150(a) rules and regulations of hospital; medical welfare of patient	§150(c) patient's clinical record	
ARIZONA (no provision)													
ARKANSAS (no provision)													
CALIFORNIA WELFARE & INSTITUTIONS CODE (1965 Supp.)			§4017 regulations of Dep't of Mental Hygiene to promote patients' interests	[n.2]		§4017 superior judge or district attorney of county from which patient admitted or committed [n.2]			[n.3]		[n.3]		
COLORADO REV.STAT.(1963) Ch.71,art.1						§23(2) judge of court having jurisdiction	§23(2) spouse, relatives, and attorney						
CONNECTICUT (no provision) [n.4]													
DELAWARE (no provision)													
FLORIDA (no provision) [n.4]													
GEORGIA CODE(1965 Supp) Title 88 [n.4]	§516(a)(1) to communicate by sealed mail or otherwise with persons and agencies in or out of hospital	§516(a) superintendent	§516(a) rules and regulations of hospital medical welfare of patient		§516(c) patient's clinical record	§516(b) dep't of public health, sup't, and committing court	§516(b) attorney or next of kin		§516(a)(2) to receive visitors	§516(a) superintendent	§516(a) rules and regulations of hospital; medical welfare of patient	§516(c) patient's clinical record	§516 attorney (at reasonable times)

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V-B. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- COMMUNICATION

STATE AND STATUTE	CORRESPONDENCE								VISITATION				
		Restrictions				No Restrictions on Correspondence with		Writing Materials Furnished		Restrictions			No Restrictions on Visits by
	General Freedom	Approval by	Criteria	Censorship	Record	Officials	Others		General Freedom	Approval by	Criteria	Record	
HAWAII (no provision)													
IDAHO CODE(1965 Supp.) Title 66	§346(a)(1) to communicate by sealed mail or otherwise with persons and agencies in or out of hospital	§346(a) head of hospital	§346(a) rules and regulations of hospital; medical welfare of patient		§346(c) patient's clinical record	§346(b) committing court			§346(a)(2) to receive visitors	§346(a) head of hosptial	§346(a) rules and regulations of hospital; medical welfare of patient	§346(c) patient's clinical record	
ILLINOIS STAT.(1965) Ch.91-1/2	[n.5]		[n.5]			§12-10 Governor, Attorney General, judges, State's Attorneys, officers of Dep't of Mental Health	§12-10 attorneys		§12-1 to receive visitors	§12-1 superintendent	§12-1 medical welfare of patient	§12-1 patient's clinical record	
INDIANA (no provision) [n.4]													
IOWA CODE(1965 Supp.) Ch.222				§8 patients' letters may contain nothing offensive		§8 members of board of control of state institutions, or state or county officials							
KANSAS (no provision) [n.4]													
KENTUCKY REV.STAT.(1963 1966 Supp.) Ch.210	§280(6) to communicate with any person or governmental agency [n.6]					§220 commissioner of mental health	§220 attorney		§280(6) to receive visitors [n.6]				
LOUISIANA REV.STAT.(1950) Title 28	§171(5) communication with any persons	§171(5) physician in charge		§171(5)		§171(1) director or agent of dep't of hospitals	§171(1) counsel	§171(5)	§171(9) to be visited by relatives and friends [n.7]	§171(9) superintendent [n.7]			§171(2) minister
MAINE (no provision) [n.4]													
MARYLAND CODE(1964) Art.59						§35 Dep't of Mental Hygiene	§35 one person designated by patient every month	§35					
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§98 [n.8]		[n.8]	[n.8]		§98 Dep't of Mental Health	[n.8]	[n.8]	§97 attorney may visit client [n.9]	§97 sup't or manager, or court order [n.9]	§97 reasonable time; not injurious to patient [n.9]		

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V-B. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- COMMUNICATION

STATE AND STATUTE	CORRESPONDENCE								VISITATION				
	General Freedom	Restrictions				No Restrictions on Correspondence with		Writing Materials Furnished	General Freedom	Restrictions			No Restriction on Visits by
		Approval by	Criteria	Censorship	Record	Officials	Others			Approval by	Criteria	Record	
MICHIGAN (no provision)													
MINNESOTA (no provision) [n.4,10,11]	[n.10]	[n.10]					[n.10]		[n.11]	[n.11]			[n.11]
MISSISSIPPI (no provision)													
MISSOURI (no provision) [n.4]													
MONTANA (no provision) [n.4]													
NEBRASKA (no provision) [n.4]													
NEVADA (no provision)													
NEW HAMPSHIRE REV.STAT.(1964) Ch.126A [n.4]	[n.12]	[n.12]		[n.12]		§9 advisory commission on health & welfare			[n.13]				
NEW JERSEY STAT.(1965 Supp.) Title 30,ch.4	§24.2(2) to communicate by sealed mail or otherwise with persons and agencies in or out of facility	§24.2 head of facility	§24.2 rules and regulations of facility; patient's medical care and treatment		§24.2 patient's clinical record	§24.2 Comm'r of Institutions & Agencies, and committing court	§24.2 attorney	§24.2	§24.2(3) to receive visitors	§24.2 head of facility	§24.2 rules and regulations of facility; patient's medical care and treatment	§24.2 patient's clinical record	
NEW MEXICO (no provision) [n.4]													
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.)		§15 regulations of comm'r of mental hygiene in interests of patients				§15 public officials and mental health information service							
NORTH CAROLINA (no provision) [n.4]													
NORTH DAKOTA (no provision) [n.4]													
OHIO (no provision) [n.4]													

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V-B. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- COMMUNICATION

STATE AND STATUTE	CORRESPONDENCE								VISITATION				
	General Freedom	Restrictions				No Restrictions on Correspondence with		Writing Materials Furnished	General Freedom	Restrictions			No Restrictions on Visits by
		Approval by	Criteria	Censorship	Record	Officials	Others			Approval by	Criteria	Record	
OKLAHOMA (no provision) [n.4,14]									[n.14]	[n.14]		[n.14]	[n.14]
OREGON (no provision) [n.15]									[n.15]	[n.15]		[n.15]	
PENNSYLVANIA STAT.ANN.(1954) Title 50	§1481(5);tit.71,§1473(1)(b)(1962) reasonable opportunity to communicate with any person outside institution	§1481(5) superintendent				§1481(1) superintendent,dep't of welfare,committing court,and Governor		§1481(5)	tit.71,§1473(1)(b)(1962) all proper visitors being family members, friends, agents or attorneys				§1481(1),(2) counsel or representative of dep't of welfare;minister [n.7]
RHODE ISLAND (no provision) [n.4]													
SOUTH CAROLINA CODE OF LAWS (1962) Title 32	§1021(1) to communicate by sealed mail or otherwise with persons and agencies in or out of institution	§1021 superintendent	§1021 rules and regulations of Dep't of Mental Health;welfare of patient		§1021 patient's clinical record	§1021 Dep't of Mental Health, and committing court			§1021(2) to receive visitors	§1021 superintendent	§1021 rules and regulations of Dep't of Mental Health; welfare of patient	§1021 patient's clinical record	
SOUTH DAKOTA (no provision) [n.4]													
TENNESSEE CODE(1966 Sup.) Title 33		§306(a) superintendent	§306(a) medical welfare of patient	§306(a) (incoming mail)		§306(a)(2) (outgoing mail) courts	§306(a)(2),(3) (all mail) attorney or physician; (outgoing mail)minister and family		§306(a)(1) to receive visitors	§306(a) superintendent	§306(a) reasonable rules and regulations		
TEXAS (no provision) [n.4]													
UTAH (no provision) [n.4]													
VERMONT STAT.(1959) Title 18									[n.16]		[n.16]		§2512 attorney(at reasonable times)

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V-B. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- COMMUNICATION

STATE AND STATUTE	CORRESPONDENCE								VISITATION				
	General Freedom	Restrictions				No Restrictions on Correspondence with		Writing Materials Furnished	General Freedom	Restrictions			No Restrictions on Visits by
		Approval by	Criteria	Censorship	Record	Officials	Others			Approval by	Criteria	Record	
VIRGINIA (no provision) [n.17]		[n.17]	[n.17]	[n.17]									
WASHINGTON (no provision) [n.4]													
WEST VIRGINIA (no provision)													
WISCONSIN STAT.(1965)				ch.51,§35(2) (incoming mail)		ch.46,§05(3);ch.51,§35 (1);ch.58,§05(4) dep't of public welfare, governor, attorney-general, judges, or district attorneys	ch.51,§35 (1) attorneys						
WYOMING (no provision) [n.4,18]			[n.18]	[n.18]			[n.18]						
DISTRICT OF COLUMBIA (no provision) [n.4]													

Chart V-B. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- COMMUNICATION

FOOTNOTES

1. The charted provisions for the mentally ill are also applicable to the mentally retarded because mental retardation is specifically included in the definition of"mental illness" [see Chart I-A] -- Alaska, Georgia ("when the mentally retarded person is incapable thereby of making a satisfactory adjustment outside of a psychiatric hospital").

2. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL §3314 (April, 1966): "All patients are to be allowed the right to send uncensored mail to superior court judges, district attorneys, their own attorneys, the Superintendent, and to the Director. No letter to any other person with whom the patient has a reasonable right to correspond may be held up unless it contains obscene, vulgar, or threatening language. ...."

   Id. §3315: "Mail from a superior court judge or district attorney of the county from which the patient was admitted should be delivered unopened. Mail identified as containing checks payable to patients may be diverted by the mail room to the proper office for deposit to the patient's personal account and receipt issued to the patient. Other mail shall be opened by patients in the presence of an employee and money, negotiable instruments, documents, and articles which may be harmful to the welfare of the patient shall be delivered to the office and a receipt given. Where patient's condition warrants, mail may be inspected by the ward physician and, if the contents are thought to be harmful to the patient, may be withheld" -- California.

3. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL §3313 (April, 1966): "Each hospital shall permit as much visiting as the time of the staff of the hospital and routine of their work will permit. Patients should be encouraged to invite visitors to visit them. Patients preference concerning visits by friends and relatives should be considered" -- California.

4. There are no provisions for mentally retarded patients, but there are provisio applicable to the mentally ill -- CONNECTICUT GEN. STAT. tit. 17, §§189, 190 (1960)(correspondence and visitation); FLORIDA STAT. ch. 394, §§13-17 (1965 Supp.) (correspondence); INDIANA STAT. tit. 22, §1034 (Burns 1964) (visitation); KANSAS STAT. ch. 59, §2929 (1965 Supp.)(correspondence and visitation); MAINE REV. STAT. tit. 34, §2254(1),(2)(1964)(correspondence and visitation); MINNESOTA STAT. ch. 253, §§11, 12, 27 (1959, 1965 Supp.) (correspondence); MISSOURI STAT. ch. 202, §847 (1962)(correspondence and visitation); MONTANA REV. CODES tit. 38, §§112-116 (1961)(correspondence); NEBRASKA REV. STAT. ch. 83, §§314, 315 (1958)(correspondence); NEW HAMPSHIRE REV. STAT. ch. 135, §33 (1964)(correspondence); NEW MEXICO STAT. ch. 34, art. 2, §15 (1953)(correspondence and visitation); NORTH CAROLINA GEN. STAT. ch. 122, §46 (1964)(correspondence and visitation); NORTH DAKOTA CENTURY CODE tit. 25, ch. 03, §20 (1960, 1965 Supp.)(correspondence and visitation);

OHIO REV. CODE ch. 5122, §29 (1966 Supp.)(correspondence and visitation; may be made applicable to mentally retarded patients by ch. 5125, §25); OKLAHOMA STAT. tit. 43A, §93 (1961)(correspondence and visitation; formerly also applicable to mentally retarded patients); RHODE ISLAND GEN. LAWS tit. 26, ch. 3, §20 (1956)(correspondence); SOUTH DAKOTA CODE tit. 30, §§0124, 9905 (1939)(correspondence); TEXAS REV. CIVIL STAT. art. 5547, §86 (Vernon 1958)(correspondence and visitation); UTAH CODE tit. 64, ch. 7, §48 (1953, 1965 Supp.)(correspondence and visitation); WASHINGTON REV. CODE tit. 72, ch. 23, §220 (1962)(correspondence); WYOMING STAT. tit. 25, §72 (1965 Supp.)(correspondence and visitation); D.C. CODE tit. 21, §561 (1966 Supp. V)(correspondence and visitation).

5. "With regard to other correspondence [not with the correspondents specially authorized by statute] the patient shall be allowed the maximum freedom and privacy consistent with his safety and welfare" [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 9.03 (July 1, 1964)] -- Illinois.

6. The charted provisions of §280(6) apply only to patients hospitalized by certification under the procedure of §280 -- Kentucky.

7. In addition to the charted provisions, a patient has a right to be visited and examined: "by a physician designated by him or a member of his family or a near friend. This examination shall be made only with the consent of the patient and the superintendent. ..." -- Louisiana, §171(8); "by any medical or osteopathic practitioner designated by him or by any member of his family or 'near friend.' With the consent of the patient and of the superintendent, the medical or osteopathic practitioner may attend the patient for all maladies, other than mental illness..." -- Pennsylvania, §1481(7).

   A patient may also "request the Commissioner of Mental Health to arrange for the examination of the patient's mental condition by a qualified physician not associated with the Department of Public Welfare" -- Pennsylvania, §1481(8).

8. "All other letters [not to or from the Department of Mental Health] to or from the patient may be sent as addressed or to his parent or legal guardian or most interested friend" (§98).

   Cf. DEP'T OF MENTAL HEALTH: REGULATION No. 23 (1955): "(1) Unless known to have obscene or other unmailable content, any mail addressed by a patient to the Commissioner or other representative of the Department shall be forwarded and if sealed shall not be opened. (2) Patients shall be allowed a reasonable amount of stationery and postage. Care should be taken to assure all patients opportunity to write to friends or relatives, if they so desire. The superintendent shall exert a proper discretion in preventing the transmission of letters intended by patients for delivery to other persons, when the interests or recovery of the patient might be injured or delayed or the safe administration of the affairs of the institution interfered with...." -- Massachusetts.

9. In addition to the statutory provisions, see DEP'T OF MENTAL HEALTH: REGULATION No. 24, §2: "Relatives or friends should be allowed to visit a patient when, in the opinion of the Superintendent, such visit will not be detrimental to the patient" -- Massachusetts.

10. MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. VIII, §V.E, at 73 (1959): "At the time of entrance the name of the relative or other person to whom a patient will write should be given. A patient may write to his correspondent at least once a month. .... Patients may receive letters from persons other than their families, subject to approval by the superintendent...." -- Minnesota.

11. MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. VIII, §V.H, at 73 (1959): "(1)...friends as well as relatives may visit a patient during visiting hours; however, friends should have the approval of the family, and even with that the superintendent may refuse the privilege if it seems advisable. (2) ...The superintendent reserves the right to supervise visits and to restrict the number of these. ... Only in highly unusual circumstances would the visiting privilege be denied parents. ... (3)...In general each institution asks that no visits be made during the first month after entrance and recommends that the visits be limited to not more than one a month thereafter. ...." -- Minnesota.

12. LACONIA STATE SCHOOL: CHILD CARE §5.02(2)(no date): "Employees are expected to encourage and to assist residents in writing letters to their parents and friends. In all cases, letters written by or for the residents must first be forwarded to the Supervisor of Child Care before they can be mailed. All letters should be properly addressed and left unsealed. ...All in-coming mail for the residents must go through the Child Care Office" -- New Hampshire.

13. LACONIA STATE SCHOOL: CHILD CARE §5.02(4)(a)(no date): "Parents and friends may visit residents at any time but must first report to the Child Care Office..." -- New Hampshire.

14. DEP'T OF PUBLIC WELFARE: POLICIES & PROCEDURES; STATE SCHOOLS FOR THE MENTALLY RETARDED at 4 (Oct. 1, 1964): "Each State School for the Mentally Retarded will maintain a schedule of visiting hours for parents, guardians, relatives and friends of the pupil. .... At time of admission of a pupil to the state school, the parent or other person responsible for seeking the admission will be asked to designate who among relatives and friends shall not have visitation privileges. The state school will maintain a record of unauthorized visitors for each pupil. ...." -- Oklahoma.

15. FAIRVIEW HOSPITAL & TRAINING CENTER: STANDARD POLICY INSTRUCTION No. 509 (July 15, 1964): "§2.1 Responsible adults who state they are relatives of a patient may be allowed to visit on the cottage provided there are no specific restrictions for that patient. Director of Social Service shall be responsible for determining those persons who cannot visit individual patients, and for seeing that Medical Records Librarian is so advised so that current status is posted on patient locator file. §2.2 Director of Nursing shall be responsible for authorizing visits and making necessary arrangements and notifications" -- Oregon.

16. See BRANDON TRAINING SCHOOL: VISITING & VACATION POLICY (June 1, 1965), providing for "regular visits by parents or friends of the children... unless unusual circumstances are involved in individual cases" -- Vermont.

17. DEP'T OF MENTAL HYGIENE & HOSPITALS: MANUAL OF INSTRUCTIONS FOR NURSING SERVICE PERSONNEL at 14, 15 (1965): "Incoming letters are opened by designated employees. Money or unsuitable artides are removed. Letters are delivered to the patients. ....Outgoing letters are given to the designated person to read before being mailed. Letters which are written and mailed during a patient's illness may prove to be embarrassing to the patient at a later date when he or she has recovered. ..." -- Virginia.

18. STATE TRAINING SCHOOL: GENERAL REGS. RELATING TO EMPLOYMENT §10 (May, 1964): "(a) ....The attendant should be willing to assist the child in corresponding with relatives and friends. .... (h) Interchange of correspondence between parent and child is encouraged.... All letters must be channeled through the charge attendant who in turn sends them to the Mail Clerk for censoring and mailing. All letters are to be sent to the office on Monday morning. Each child is allowed one letter per week. Please do not allow them to write to people they have not had previous correspondence from. Comments concerning ill health of the pupils and criticism of the Institution or employees should be discouraged in these personal letters since such information should be sent only from the office...." -- Wyoming.

V-C. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TRAINING

STATE AND STATUTE	EDUCATION AND TRAINING [n.a]	EMPLOYMENT	
		Activities	Compensation
AAMD DRAFT ACT (1964)	art.3, §e training by modern scientific standards, including educational and rehabilitational services	art.2,§o;art.8,§g resident employment on placement	
ALABAMA (no provision)			
ALASKA (no provision)			
ARIZONA (no provision)			
ARKANSAS (no provision)			
CALIFORNIA WELFARE & INSTITUTIONS CODE (1962)	§7001 agricultual and mechanical education [n.1]	[n.2]	[n.2]
COLORADO (no provision)			
CONNECTICUT (no provision)			
DELAWARE (no provision) [n.3]	[n.3]	[n.3]	
FLORIDA (no provision) [n.4]		[n.4]	[n.4]
GEORGIA (no provision)			
HAWAII REV.LAWS(1965 Supp.) Ch.82		§11 employment placement on conditional release	§17 compensation for services for training school and hospital as determined by director [n.5]
IDAHO (no provision)			
ILLINOIS (no provision) [n.6,7]	[n.6]	[n.7]	[n.7]
INDIANA STAT.(Burns 1964) Title 22	§§527-531,1704,1735 industrial and scholastic education	[n.8]	[n.8]
IOWA CODE(1949;1965 Supp.) Ch.218	[n.3]	[n.3]	§§42-44 wages for services at institution apportioned among state,dependents, and inmate
KANSAS STAT.(1964) Ch.76	§ 1409 academic and vocational educatin and training		
KENTUCKY REV.STAT.(1963; 1966 Supp.) Ch.203		§§190,220(2) farm colony;manufacturing and other labor or construction approved by Div'n of Mental Retardation	
LOUISIANA REV.STAT.(1950) Title 28	§373 agricultural,industrial,and other training and employment	§171(3) patient's right to be employed at useful occupation,depending on his condition and available facilities	§171(4) patient's right to sell his products and labor an to keep proceeds
		§26 employment at separate colonies	§26 wages determined by sup't
MAINE (no provision)			
MARYLAND (no provision) [n.9]	[n.9]		
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§§30,45 instruction in arts,crafts,manual training,kindergarten and other occupations;school instruction and education	§§30,39D work in or about institution	§39D (optional)one dollar per day
		§16A occupational training while placed at board	
MICHIGAN STAT.ANN.(1965 Supp.) Title 14		§805(7) employment suited to patients' capacity and strength	§805(7) (optional)payment for work assignments outside hospital [n.10]
MINNESOTA STAT.(1965 Supp.) Ch.247	§§14,15 academic education and voctional training(at Owatonna State School)		

V-C. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TRAINING

STATE AND STATUTE	EDUCATION AND TRAINING [n.a]	EMPLOYMENT	
		Activities	Compensation
MISSISSIPPI CODE(1952)	§6766 education primarily in manual arts of farm,house, and shop		
MISSOURI STAT.(1962) Ch.202	§625 academic and vocational training	§645 employment in residence at half-way house	§645 compensation apportioned among state,patient,and institution or half-way house
MONTANA REV.CODES(1965) Title 80		§1501 industrial activities permitted at institutions	
NEBRASKA REV.STAT.(1958) Ch.83	§218 industrial,mechanical,agricultural and academic training		
NEVADA (no provision)			
NEW HAMPSHIRE REV.STAT.(1964) Ch.126A	§30 studies,trades,and employments suited to ages and capacities of patients [n.11]		
NEW JERSEY STAT.(1964; 1965 Supp.) Title 30,ch.4	§24.1 for patients between 5 and 20,education and training suited to age and attainments	§92 employment in productive occupations consistent with health,strength,and mental capacity [n.12]	§92 compensation determined by State Board of Control of Institutions & Agencies [n.12]
NEW MEXICO (no provision)			
NEW YORK MENTAL HYGIENE LAW(McKinney 1951;1966 Supp.)		§§34(10),127 mployment at colonies or state farm	§127(1) compensation of patients at colony apportioned among state,patient,and institution or colony
		§34(18) sheltered workshop program	
NORTH CAROLINA GEN.STAT.(1964) Ch.122	§69.1(3) educational opportunities,and training in social and occupational skills		
NORTH DAKOTA CENTURY CODE (1960) Title 25,ch.04	§02 instruction in trades and manual industries		
OHIO REV.CODE(1954; 1966 Supp.) Ch.5125	§26 agricultural and mechanical education [n.13]	§§26,27;ch.5119,§54 employment by institution;placement in private employment [n.13]	§27 wages of patient in private employment are his private property
OKLAHOMA STAT.(1961) Title 43A [n.14]	§94 physical,manual,and literary training and school work		
OREGON REV.STAT.(1965) Ch.179	[n.15]	§§440,450 reasonable work for state required [n.15]	
PENNSYLVANIA STAT.ANN.(1954) Title 50	§1484(a),(c) occupational rehabilitation and therapy	§1481(3) patient's right to be employed at useful occupation,depending on his condition and ability of institutio	§§1481(4),1484(g) patient's right to sell hi products and keep proceeds
		§1484(a),(b) institutional maintenance and industrial employment	§1484(a),(f) gratuity grants for institutional employment
		§§1341(c),1342(c) employment while boarded out or at separate colonies	§§1341(c),1342(c) wages apportioned among maintenance,institution or colony,and patient
RHODE ISLAND (no provision) [n.16]		[n.16]	[n.16]
SOUTH CAROLINA CODE OF LAWS (1962) Title 32	§§922(5),934(3) moral and vocational training		
SOUTH DAKOTA (no provision)			
TENNESSEE CODE(1966 Supp.) Title 33	§§306(c),508 academic and vocational education and training suitable to patient's age and attainments	§104(7) placement at therapeutic employments	
TEXAS REV.CIVIL STAT. (Vernon 1966 Supp.)	art.3174b,§3 occupational therapy programs	art.3871b,§15 employment placement on furlough	

V-C. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TRAINING

STATE AND STATUTE	EDUCATION AND TRAINING [n.a]	EMPLOYMENT	
		Activities	Compensation
UTAH CODE(1953) Title 64,ch.8	§5 school instruction and training in unskilled labor and trades,arts,crafts,manual training,kindergarten,and occupations		
VERMONT STAT.(1965 Supp.) Title 18	§2516 handiwork and occupational therapy	§2516 with consent of patients' legal representatives, sup't may employ patients or place them for day employment	§2516 half of earnings held for patient's benefit;half to institution fund
VIRGINIA CODE(1950) Title 37	§14 moral and vocational training		
WASHINGTON REV.CODE(1962) Title 72,ch.33	§§050,060 academic,vocational,recreational and other educational services	§040 beneficial work programs	
WEST VIRGINIA (no provision)			
WISCONSIN STAT.(1965) Ch.51	§22 academic and vocational training		
WYOMING STAT.(1957) Title 9	§429 intellectual,moral and physical training		
DISTRICT OF COLUMBIA CODE(1961) Title 32	§604 physical,intellectual and moral training		

Chart V-C. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TRAINING

FOOTNOTES

a. "Edration and Training." Only statutory provisions which specify particular types of education or training are noted in the chart. However, most statutes contain general references to these activities in provisions such as (1) definitions of "mentally retarded," "mentally deficient," or "feeble-minded" persons in terms of their need for special education or training [see Chart I-B]; (2) authorizations for the establishment or licensure of institutions which furnish education or training to the mentally retarded; or (3) hospitalization procedures which provide that mentally retarded patients are admitted for such education or training.

1. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL § 3550 (Apil, 1966): "Services for education will be provided at each Department facility having a resident population that cannot avail itself of similar services offered in the community. The Department of Mental Hygiene shall support a program of education for the mentally retarded juveniles in its hospitals...." -- California.

2. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL § 3724 (April, 1966): "Work placement is a specialized program for the employment of leave of absence patients from state hospitals wherein patients are placed in protected, non-competitive work situations developed and supervised by the Bureau of Social Work staff of the Department. Placements provide room, board, wages, and supervision by the employer. Employers are selected on the basis of their tolerance and understanding and agree to assume specified responsibilities for the patients under conditions determined by the Department. ...." -- California.

3. Specific "habilitation" programs of personal training, academic education, and employment training are provided according to residents' mental age, I.Q., and chronological age -- Delaware, HOSPITAL FOR MENTALLY RETARDED: MEMORANDUM 64-10 (Oct. 14, 1964); Iowa, WOODWARD STATE HOSPITAL-SCHOOL: MEMORANDUM 62-27(4)(July 20, 1962).

4. OP. ATT'Y GEN. (Sep. 5, 1961): "...it is my opinion that if the Board of Commissioners of State Institutions deem it advisable to create 'sheltered workshops' at the various Sunland Training Centers, said Board is possessed with the authority to do so....."

   OP. ATT'Y GEN. (Feb. 24, 1960): "...a trainee under an occupational rehabilitation program comes under the provisions of the Workmen's Compensation Act...."

   OP. ATT'Y GEN. (Feb. 15, 1960): "...I am of the opinion that the Board [of Commissioners of State Institutions] could, in granting furloughs to inmates, authorize such persons to use bank facilities for funds that they earn during furlough periods. ....I do not believe the above comments could be considered applicable to furloughed incompetent inmates if such a situation arose" -- Florida.

5. "The director [of the Waimano Training School and Hospital] shall prescribe, subject to the approval of the governor...rules necessary for the collection, conservation and disposition of earnings or income of any patient or ward, which are not subject to the control of a court-appointed guardian of the estate of such patient or ward, upon such terms and conditions as the director may deem advisable" -- Hawaii, § 16.

6. Licensed private training schools for the "mentally deficient" are required by regulation to maintain "a school program for educable children,... and a school program for trainable children.... Manual activities should have a large place in the program...." [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 13.03(G)(April 11, 1961)]. Patients in state institutions may be given "industrial therapy assignments" [Id. RULE 7.03 (Aug. 3, 1961)] -- Illinois.

7. Patients may be "released on wage placement," in which case they "shall be paid according to their abilities" [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 2.03 (April 10, 1965)] -- Illinois.

8. See DEP'T OF MENTAL HEALTH: CODIFIED OFFICIAL BULLETIN V-11.00 (July 16, 1964), providing for "Hospital and Community Work Placements" consisting of "Industrial Therapy, Vocational Rehabilitation and Vocational Placement" [§11.03(A)]. The state may not compensate a patient for his work [OP. ATT'Y GEN. No. 63 (July 10, 1944)], but "when patient earns money while living on the grounds and working in a sheltered workshop or in off-grounds' employment, arrangements should be made with 'employer' for a weekly statement of patient's earnings" [§ 11.10(B)]. The patient's earnings are apportioned among his spending money, savings, income taxes, dependents, and maintenance [§ 11.12(C)] -- Indiana.

9. There is an industrial therapy program at Rosewood State Hospital, under which a patient's work day may not exceed "5 or 6 hours" [ROSEWOOD STATE HOSPITAL: EXECUTIVE MEMORANDUM (Jan. 20, 1956)] -- Maryland.

10. In an occupational therapy program, "where a patient acquires working materials with his own funds and sells the finished product, he shall be allowed to retain all profits from the sale" [RULES & REGS. OF DEP'T OF MENTAL HEALTH § 5.71 (1964)] -- Michigan.

11. There is a program for "Institutional Workers and Trainees" [LACONIA STATE SCHOOL: CHILD CARE § 5.36 (no date)] and for "Work Placements" in the community [LACONIA STATE SCHOOL: EDUCATION & TRAINING § 6.10 (Apr. 5, 1962)] -- New Hampshire.

12. In addition to the charted provisions, § 165.2(2) provides for "sheltered life programs" for mentally retarded patients. See DEP'T OF INSTITUTIONS & AGENCIES: ADMIN. ORDER 1:20 (Apr. 16, 1959), establishing a "Sheltered Work Program" for "institutional Aides" earning "$1,500 per annum (less maintenance) with annual increments of $100 to a maximum of $1,700 per annum." See also BUREAU OF MENTAL DEFICIENCY, DEP'T OF INSTITUTIONS & AGENCIES: CIRCULAR No. 9 (May 9, 1958), providing for "Work Placement" in which "remuneration shall be based on individual ability" -- New Jersey.

13. In addition to the charted provisions, ch. 5127 provides for the establishment of "training centers and workshops for the special training of mentally deficient persons" -- Ohio.

14. The charted provisions may be obsolete, since they originated prior to the transfer of state institutions for the mentally retarded from the former Department of Mental Health and Mental Retardation to the Department of Public Welfare. See tit. 56, §§ 301, 303 -- Oklahoma.

15. See FAIRVIEW HOSPITAL & TRAINING CENTER: STANDARD POLICY INSTRUCTION No. 137 (Feb. 18, 1966), providing for a "vocational training program" designed "to increase the vocational skill of those enrolled" or "to accomplish a specific therapeutic purpose" [§ 1.1], and a "work program" designed to meet the institution's "need for productive work by assignment and supervision of residents in accordance with their skill levels and their availability for such jobs" [§ 1.2] -- Oregon.

16. See DEP'T OF SOCIAL WELFARE: POLICY, PROCEDURE AND FUNCTIONAL ORGANIZATIONAL CHART RE LADD SCHOOL § II.E.7(c), at 8 (July 20, 1965), providing for "job placement in the community or at a state institution (including Ladd School). Based on demonstrated performance, the retarded person could progress to the status of a 'special employee' as an aide to a grounds maintenance man, laundry worker, cook's helper, cleaner, messenger, etc. If performance is not equal to that of an average employee, he may perform satisfactorily as a 'small payroll employee'" -- Rhode Island.

V-D. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TREATMENT

STATE AND STATUTE	MECHANICAL RESTRAINTS			MALTREATMENT			MAJOR MEDICAL TREATMENT			
	Approval by	Criteria	Record	Standard of Care	Investigation of Complaints by	Criminal Sanction	Procedures Covered	Consent of: Patient	Consent of: Others	Emergency Provision
A.A.M.D. DRAFT ACT (1964)				art.3,§e humane care and treatment [n.1]	art.4,§b;art.6,§a(3) state authority	[n.2]				
ALABAMA (no provision) [n.3,4]	[n.3]	[n.3]	[n.3]	[n.4]						
ALASKA STAT.(1962;1965 Supp.) Title 47,ch.30 [n.5]	§140 head of hospital or designee	§140 medical need of patient	§140 clinical record of patient	§130(a) humane care and treatment [n.1]	§010(b)(9),(10) dep't of health & welfare		§130(b) surgery;psychiatric therapies determined by Dep't of Health & Welfare	§130(b) if competent [n.6]	§130(b) if patient is incompetent,spouse,guardian, parent,oldest adult child,or if none,comm'r of health & welfare or designee;if patient is minor,also parent or guardian	§130(b) consent of comm'r of health & welfare or designee
ARIZONA (no provision) [n.7]										
ARKANSAS STAT.(1964) Title 41						§§1429,1430 misdemeanor; $100 fine or six months imprisonment or both [n.8]				
CALIFORNIA WELFARE & INSTITUTIONS CODE (1965 Supp.)	[n.9]			[n.10]	§§4015,4021,4022,6209, 6210 Dep't of Mental Hygiene	PENAL CODE §§19,361(1960) misdemeanor;imprisonment not exceeding six months,or fine not exceeding $500,or both [n.8]	[n.11]	[n.11]	[n.11]	[n.11]
COLORADO REV.STAT.(1963) Ch.71,art.1				§23(1) humane care and treatment						
CONNECTICUT (no provision)										
DELAWARE (no provision)										
FLORIDA (no provision) [n.12]							[n.12]		[n.12]	[n.12]
GEORGIA CODE(1965 Supp.) Title 88 [n.5]	§515 sup't or designee	§515 medical needs of patient	§515 clinical record of patient	§514 humane care and treatment [n.1]	§519 dep't of public health					
HAWAII (no provision)										
IDAHO CODE(1965 Supp.) Title 66	§345 head of hospital	§345 medical needs of patient	§345 clinical record of patient	§344 humane care and treatment [n.1]		§349 misdemeanor;fine not more than $500 and imprisonment not more than one year				

V-D. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TREATMENT

STATE AND STATUTE	MECHANICAL RESTRAINTS			MALTREATMENT			MAJOR MEDICAL TREATMENT			
								Consent of		
	Approval by	Criteria	Record	Standard of Care	Investigation of Complaints by	Criminal Sanction	Procedures Covered	Patient	Others	Emergency Provision
ILLINOIS STAT.(1965) Ch.91-1/2	[n.13]	[n.13]		§§5-5,8-20 standard trmtment necessary for welfare of patient or public [n.14,15]	§§12-2,16,17,18 Dep't of Mental Health or health officer	§15-1 misdemeanor;fine not less than $50 nor more than $1000, or imprisonment not exceeding 6 months,or both	§5-5 surgery [n.14,16]	§5-5 [n.14,16]	§5-5 parent or guardian [n.14,16]	[n.16]
INDIANA STAT.(Burns 1964) Title 22	§1908 superintendent	§1908 welfare of patient and conduct of institution		[n.17]		§1302 misdemeanor;fine not less than $50 nor more than $1000, or imprisonment not exceeding 6 months,or both [n.5,8]				
IOWA CODE(1966 Supp.) Ch.218 [n.7]				§76(5),(7) adequate care and treatment						
KANSAS STAT.(1964) Ch.76 [n.7]	§§1411,1617 superintendent	§§1411,1617 welfare of patient or conduct of school			§§201-203 investigating committee					
KENTUCKY REV.STAT.(1963) Ch.203			§240(1)(c) restraint record							
LOUISIANA REV.STAT.(1950) Title 28						§182 fine not more than $500,or imprisonment not more than two years,or both				
MAINE (no provision) [n.7]										
MARYLAND CODE(1964) Art.59		[n.18]	[n.18]	§18 just and humane care and careful and adequate treatment	§23,24 Dep't of Mental Hygiene				[n.19]	[n.19]
MASSACHUSETTS GEN.LAWS(1965) Ch.123	§35 sup't,physician,or assistant physician [n.20]	§§35,37 violence, self injury, homicidal or suicidal condition,physical exhaustion [n.20]	§§35,37 institution record for two years [n.20]	§7 efficient,economical and humane management	§29(d) trustees of institution	§38 (improper restraint)fine not less than $50 nor more than $300 §111 fine or imprisonment at discretion of court [n.8]				
MICHIGAN STAT.ANN.(1956) Title 14	[n.21]	[n.21]		§801 humane,scientific, educational and economical treatment [n.22]	[n.22]		[n.23]		[n.23]	

V-D. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TREATMENT

STATE AND STATUTE	MECHANICAL RESTRAINTS			MALTREATMENT			MAJOR MEDICAL TREATMENT			
								Consent of		
	Approval by	Criteria	Record	Standard of Care	Investigation of Complaints by	Criminal Sanction	Procedures Covered	Patient	Others	Emergency Provision
MINNESOTA STAT.(1959)		[n.24]		ch.246,§014 [n.24]	[n.25]	ch.609,§23(1964) imprisonment not more than one year,or fine not more than $1,000,or both [n.8,24]	ch.246,§10; ch.256,§0' surgery [n.26]		[n.26]	ch.246,§10;ch.256,§06 authorization of sup't; consent of comm'r of public welfare [n.26]
MISSISSIPPI (no provision) [n.7]										
MISSOURI STAT.(1962) Ch.191 [n.7]						§170 fine not less than $5 nor more than $100,or imprisonment not less than ten days nor more than six months,or both [n.8]	[n.27]	[n.27]	[n.27]	
MONTANA REV.CODES(1947; 1949)						tit.94,§§3561,116 misdemeanor;imprisonment not exceeding six months,or fine not exceeding $500,or both [n.8]				
NEBRASKA REV.STAT.(1958; 1965 Supp.) Ch.83 [n.7]				§218 humane treatment	§113 Director of Public Institutions					
NEVADA REV.STAT.(1963) Ch.433				§120(9) accepted and appropriate treatments		§630(1) misdemeanor;imprisonment for not more than six months or fine not more than $500,or both [n.8]	§120(10) surgical operation [n.28]		§120(10) sup't if no known kindred or person with legal authority [n.28]	
NEW HAMPSHIRE (no provision) [n.29,30]	[n.29]		[n.29]	[n.30]						
NEW JERSEY STAT.(1964;1965 Supp.) Title 30,ch.4		§24.1 patient's medical needs;emergency control of violent,disturbed or depressed behavior	§24.1 clinical record of patient	§24.1 humane care and treatment and professional services [n.1]	ch.1,§§13-17 State Board of Control of Institutions & Agencies	[n.2]	[n.31]		[n.31]	
NEW MEXICO (no provision) [n.7]										
NEW YORK MENTAL HYGIENE LAW(McKinney 1951;1966 Supp.)		[n.32]		[n.32]	§§34(13),131 director of institution or comm'r of mental hygiene	PENAL LAW,§§1121,1123(2),1937 (1944) misdemeanor;imprisonment for not more than one year,or fine not more than $500,or both [n.8,32]				

V-D. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TREATMENT

STATE AND STATUTE	MECHANICAL RESTRAINTS			MALTREATMENT			MAJOR MEDICAL TREATMENT			
								Consent of		
	Approval by	Criteria	Record	Standard of Care	Investigation of Complaints by	Criminal Sanction	Procedures Covered	Patient	Others	Emergency Provision
NORTH CAROLINA GEN.STAT.(1964) Ch.122 [n.7]				§69 humane regulations of State Board of Mental Health			ch.130,§191 surgical operations	ch.130,§191	ch.130,§191 if patient is minor, family member, guardian, or custodian; if patient is incompetent, family member or guardian	ch.130,§191 if patient is incapacitated, minor, or incompetent, and consent of family member, guardian, or custodian cannot be obtained -- consent of chief medical officer and sup't
NORTH DAKOTA (no provision) [n.7]										
OHIO (no provision) [n.7]										
OKLAHOMA (no provision) [n.7,33]	[n.33]		[n.33]	[n.33]	[n.33]					
OREGON (no provision)										
PENNSYLVANIA STAT.ANN.(1954; 1965 Supp.) Title 50	§1481.1 superintendent or designee	§1481.1 medical needs of patient	§1481.1 clinical record of patient	tit.71,§1473(1)(b)(1962) proper care and treatment		[n.34]	§1611 elective surgery		§1611 if patient has no parent, spouse, issue, next of kin, or guardian--consent of sup't with advice of two other physicians or surgeons	
RHODE ISLAND (no provision) [n.7,35]	[n.35]	[n.35]		[n.35]	[n.35]					
SOUTH CAROLINA CODE OF LAWS (1962) Title 32						[n.36]	[n.37]			
SOUTH DAKOTA CODE(1960 Supp.) Title 30 [n.7]							§0603 surgery		§0603 parent or guardian	§0603 if parents or guardian cannot be located, consent not necessary
TENNESSEE CODE(1966 Supp.) Title 33	§306(d) physician	§§306(d),307 patient's medical needs and welfare	§306(d) medical record of patient	§§306(b),307 standard, humane care and treatment [n.1]	§308 comm'r of mental health	§304(a)(2) (denial of rights) fine not exceeding $5000 or imprisonment not less than one year or more than five years, or both [n.38]	§307 surgery [n.39]	§307 [n.39]	§307 parent, guardian, spouse, or adult next of kin [n.39]	
TEXAS REV.CIVIL STAT. (Vernon 1966 Supp.) Article 3174b [n.7]				§2 recognized medical treatment and services			§2 medical treatment and services [n.40]		§2 if patient has no guardian or responsible relative, order of sup't on advice and consent of three physicians [n.40]	§2 order of sup't upon advice and consent of three physicians [n.40]

V-D. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- TREATMENT

STATE	MECHANICAL RESTRAINTS				MALTREATMENT		MAJOR MEDICAL TREATMENT			
AND STATUTE	Approval by	Criteria &	Record	Standard of Care	Investigation of Complaints by	Criminal Sanction	Procedures Covered	Consent of		Emergency Provision
								Patient	Others	
UTAH CODE(1953) [n.7]						tit.76,ch.32,§1;ch.1,§16 misdemeanor;imprisonment not exceeding six months,or fine less than $300,or both [n.8]				
VERMONT STAT.(1959) Title 18					§§2410-2414 board of mental health	tit.13,§1306(1958) imprisonment not more than one year or fine not more than $100 nor less than $5, [n.8]	§2416 surgical operation for state-supported patient	§2416	§2416 guardian or next of kin; superintendent	
VIRGINIA CODE(1950) Title 37	[n.41]	[n.41]		[n.42]		§16;tit.18.1,§9 misdemeanor;fine not exceeding $500 or confinement not exceeding twelve months,or both [n.8]	[n.43]			
WASHINGTON REV.CODE(1962) Title 72,ch.33							§040 surgery		§040 parent or guardian	§040 if parents or guardian cannot be located,consent not necessary
WEST VIRGINIA CODE(1965 Supp)						§2688 misdemeanor;fine not less than $10 nor more than $100, or imprisonment not exceeding six months,or both [n.8]				
WISCONSIN STAT.(1965)				ch.48,§48(4) appropriate care and training for children	ch.46,§§05(3),16(7), 22(5)(a) state or county dep't of public welfare	ch.940,§29(4) fine not more than $500 or imprisonment not more than one year,or both [n.8]	ch.48,§48(6) surgery for child			ch.48,§48(6) after reasonable effort to secure consent of parent or guardian,consent of dep't of public welfare
WYOMING STAT.(1957) [n.7]	[n.44]	[n.44]	[n.44]	[n.45]		tit.6,§80 fine not to exceed $500 or imprisonment not to exceed three years,or both [n.8]				
DISTRICT OF COLUMBIA (no provision) [n.7]										

FOOTNOTES

1. Treatment must be: "in accordance with modern scientific standards, which shall include, but not necessarily be limited to educational, rehabilitational, medical, psychological, social, and protective services of at least the same quality and extent as is provided by law for such person not so admitted" -- A.A.M.D. Draft Act; "to the extent that facilities, equipment and personnel are available," in accordance with the highest standards accepted in medical or professional practice -- Alaska, Georgia, Idaho, New Jersey (*cf.* §25.7), Tennessee.

2. There is no criminal sanction, but "the director [of the state authority] and/or superintendent shall have the power and duty to enter complaint, or to appear as amicus curiae in any appropriate court on behalf of any mentally retarded person whom he believes to be...neglected,maltreated,... or in danger thereof, and to petition the court for appropriate remedy..." -- A.A.M.D. Draft Act, art. 6, §a(4); "the State board [of Control of Institutions and Agencies] may institute a civil action...against the proper superintendent, commissioner, agent, medical director,...or other officer of such institution" when it appears that the "patients in any such institution are cruelly, negligently or improperly treated..." -- NEW JERSEY STAT. tit. 30, ch. 1, §16 (1964).

3. PARTLOW STATE SCHOOL & HOSPITAL: RULES & REGS. §G.1, at 3 (no date): "Crosshalls are provided for combative or over-active patients. Patients are never put in crosshalls or restraints without an order from the supervisor or doctor. In case of an emergency a patient may be placed in seclusion or restraint and the supervisor notified at once. Necessary steps are then taken to get a doctor's order. Restraint forms are to be filled out on each patient in restraint or seclusion" -- Alabama.

4. BOOK OF RULES FOR EMPLOYEES OF ALABAMA STATE HOSPITALS §11, at 4 (1957): "For aggravated offenses, such as...abuse of a patient, employees shall be discharged...."

   PARTLOW STATE SCHOOL & HOSPITAL: RULES & REG. §I.8, at 4 (no date): "No employee will in any way abuse the patients. This applies to the use of profane language, threatening, teasing, irritating, or ridiculing of patients as well as to physical abuse, such as striking, shoving, or slapping a patient. These are grounds for immediate dismissal" -- Alabama.

5. The charted provisions for the mentally ill are also applicable to the mentally retarded because mental retardation is specifically included in the definition of mental illness [see Chart I-A] -- Alaska, Georgia ("when the mentally retarded person is incapable thereby of making a satisfactory adjustment outside of a psychiatric hospital"), Indiana.

6. A patient is competent to give consent, and his consent must be obtained "when the head of the hospital is of the opinion that the patient has insight or capacity to make responsible decision" -- Alaska.

7. There is no provision for mentally retarded patients, but there are provisions for the mentally ill -- ARIZONA REV. STAT. tit. 36, §§202(B), 521 (1966 Supp.) (maltreatment); IOWA CODE ch. 229, §38 (1965 Supp.)(maltreatment); KANSAS STAT. ch. 59, §§2927, 2928 (1965 Supp.)(mechanical restraints and maltreatment); MAINE REV. STAT. tit. 34, §2252, 2253, 2258, 2259 (1964)(mechanical restraints and maltreatment); MISSISSIPPI CODE §6886 (1952)(maltreatment); MISSOURI STAT. ch. 202, §§840, 843 (1962)(mechanical restraints and maltreatment); NEBRASKA REV. STAT. ch. 83, §356 (1965 Supp.)(maltreatment); NEW MEXICO STAT. ch. 34, art. 2, §§13,14 (1953, 1965 Supp.)(mechanical restraints and maltreatment); NORTH CAROLINA GEN. STAT. ch. 122, §47 (1964)(mechanical restraints); NORTH DAKOTA CENTURY CODE tit. 25, ch. 03, §§05, 18, 19 (1960) (mechanical restraints and maltreatment); OHIO REV. CODE ch. 5122, §§27, 28, 33 (1966 Supp.)(mechanical restraints and maltreatment; may be made applicable to mentally retarded patients by ch. 5125, §25); OKLAHOMA STAT. tit. 43A, §§91, 92, 96, 134 (1961)(mechanical restraints, maltreatment, and major medical treatment; formerly also applicable to mentally retarded patients); RHODE ISLAND GEN. LAWS tit. 26, ch. 3, §§18-23 (1956)(maltreatment); SOUTH DAKOTA CODE tit. 30, §9901(1939)(maltreatment); TEXAS REV. CIVIL STAT. art. 5547, §§9,20,70,71 (Vernon 1958)(mechanical restraints and maltreatment); UTAH CODE tit. 64, ch. 7, §§8, 22, 46, 47 (1953)(mechanical restraints and maltreatment); WYOMING STAT. tit. 25, §§52(f), 70, 71 (1965 Supp.)(mechanical restraints and maltreatment); D.C. CODE tit. 21, §§ 562, 563 (1966 Supp.V) (mechanical restraints and maltreatment).

8. Activity made criminal is described as: "harsh, cruel or unkind treatment of, or any neglect of duty towards" a patient, California (cf. PENAL CODE §673), Montana, New York [cf. PENAL LAW §1123(1)], Utah; "to wilfully tease, ridicule or abuse any mentally deficient or mentally retarded person..." Arkansas (cf. tit. 59, §§256, 257); "rude, insolent or angry touching of a patient" -- Indiana; to ill-treat or willfully neglect a "mentally deficient" person -- Massachusetts; to intentionally abuse or ill-treat a patient -- Minnesota; to "willfully beat, strike, wound or injure any inmate...or...in any other manner whatsoever mistreat or maltreat, handle or treat any such inmate in a brutal or inhuman manner, or...use any more force than is reasonably or apparently necessary for the proper control, treatment or management of such inmate" -- Missouri; to wilfully abuse a patient -- Nevada; to willfully and maliciously tease, plague, annoy, anger, irritate, maltreat, worry or excite a person "of unsound or feeble mind" -- Vermont (cf. tit. 13, § 1305); to "maltreat or misuse" a patient -- Virginia; to "tease, pester, annoy, or molest" any patient -- West Virginia; to treat a patient "with unnecessary severity, harshness or cruelty, or in any way abuse such [patient]...or...willfully refuse or neglect to perform [any required act with regard to a patient]" -- Wyoming.

9. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL §3504 (April, 1966): "Restraint and seclusion is to be used as an emergency measure, only when all other measures have failed to protect the patient from injury to himself and/or others. ...Restraint and seclusion shall never be used as punishment or as a substitute for more effective medical and nursing care programs. All restraint and seclusion, except in cases of extreme emergency, must be properly ordered by a physician on..."Restraint and Seclusion Order and Report".... In cases of extreme emergency, a patient may be restrained or secluded without a physician's order. In such circumstances, a physician must be contacted immediately for his evaluation and attention to the situation, and should prepare the [form]...if the restraint or seclusion is to be continued" -- California.

10. DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL §3312 (April, 1966): "No employee shall strike, abuse, or inflict cruelty by physical means upon any patient. The use of physical strength to secure cooperation of patients is to be avoided and is to be undertaken only to the extent necessary to insure the safety and comfort of the patient. .... No employee shall abuse or inflict cruelty by psychological means upon any patient. No employee shall use language or take actions which are detrimental to patients welfare. ...." -- California.

11. DEP'T OF MENTAL HYGIENE; POLICY & OPERATIONS MANUAL §3506 (April, 1966): "'Consent to Medical and Surgical Treatment...' shall be obtained, wherever practical, for all patients admitted to Department operated treatment facilities. In all cases, a consent must be obtained before accepting any patient on a voluntary application. This is necessary both as a means to foreclose legal action by the person granting consent, and to inform relatives of operative and other procedures. In addition to the patient (if he is an adult, not psychotic or mentally retarded, and capable of understanding procedure), individuals entitled to give consent to treatment of an incompetent are the guardian of the person (not the estate), the spouse, the father or mother, and the adult children. A married woman is deemed to be an adult. In the case of minors (under 21), consent must be obtained from the person having legal custody. ...."

Id. §3506.1: "A special consent must be obtained for psychosurgery. Such consent must be signed by at least one relative in nearest relationship to the patient, and also by the patient if he is capable of understanding the procedure to be undertaken."

Id. §3506.2: "Department facilities have a duty to provide certain forms of treatment whether or not consent is on file. These are as follows: (1) Recognized and usual forms of treatment of mental conditions. (2) Emergency operative procedures necessary to save the patient's life. Such procedures may be undertaken upon the written recommendation of a physician and approval of the superintendent or in his absence, the acting superintendent. (3) Operative procedure on a court committed patient, when it is necessary or when it is connected with the successful treatment of the mental condition, including mental deficiency. Such procedures may be undertaken only after all practical means of obtaining a consent have been exhausted, and upon written recommendation of a physician and approval of the superintendent or in his absence, the acting superintendent."

For regulations regarding the use of experimental drugs and procedures, see id. §3506.3 -- California.

12. OP. ATT'Y GEN. (Aug. 28, 1963, as amended Aug. 17, 1964): "....While the Board of Commissioners of State Institutions is declared to be the legal guardian and custodian of all persons admitted to the Sunland Training Centers, nevertheless the parents remain the natural guardian whose consent should be secured before any surgical operation is performed unless an emergency exists requiring immediate action. If the parents refuse, are unable to be located, or are dead, application should be made to the circuit court for permission to perform such surgical operation. If the parents are alive, every effort should be made to ascertain their whereabouts and thereafter to secure their consent. .... If an emergency arises that endangers the life and health of a patient, it would be the duty of the Training Center to do that which the occasion demands within the usual and customary practice among physicians and surgeons, although no person is present to give consent. ...."

    See also OP. ATT'Y GEN. (June 5, 1964), approving "the adoption by the Division of Sunland Training Centers of a uniform authorization for treatment form." This form provides for general "permission to use any and all methods of diagnosis and treatment which, in the judgment of the professional medical staff, are indicated for his, or her, best welfare and care...;" it also provides for consent "in the event an emergency requires prompt medical or surgical treatment," and for "special consent [which] will be requested as the occasion requires and time permits" for "elective surgery" -- Florida.

13. "...Restraint may be used for medical and/or surgical or protective reasons, but only on a prior written prescription of a physician... No order for restraint shall be valid for more than eight hours. All restrained patients shall be so located as to be under constant vigilance of ward personnel" [DEPT'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 10.02 (Aug. 3, 1961)]. Operational procedures for licensed private training schools must include "prohibition of mechanical restraint unless prescribed by a physician" [*Id.* RULE 13.03(H)(2)] -- Illinois.

14. A voluntary patient or a patient hospitalized by certification "may be held under such restraint and given such standard treatment as may be necessary for the welfare of the patient or of the public...provided, however, that surgery may be performed on such patients only if the consent of the patient, or the parent or guardian of such patient, is first obtained" (§5-5). A judicially committed patient may be given "such standard treatment as may be necessary for the welfare of the patient, or of the public" (§8-20) -- Illinois.

15. "...mistreatment of patients shall be defined as: (1) Forcibly laying hands on a patient (2) Striking, pushing, pulling, or shoving (3) Corporal punishment of any sort (4) Violence of any character (5) Use of violent, profane, or obscene language (6) Any failure to respond to a patient's obvious needs or to provide the supervision and care he should have (7) Infliction of any other mental or physical abuse" [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 10.01 (Aug. 3, 1961) -- Illinois.

16. "...consent for surgery must be obtained from the patient or the parent or guardian of the patient," regardless of the procedure by which the patient was hospitalized. For patients admitted informally, voluntarily, or by certification without a subsequent court order, "in a non-emergency case where surgery is deemed necessary, but the patient (or parent or guardian, if the patient is a minor) will not or cannot give consent, such surgery may be performed provided that a court order authorizing the specific surgery is first obtained from the Circuit Court... If an emergency exists and the life of the patient is threatened, no court order is necessary." Similar provisions are made for electro-shock treatment [DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 9.01 (Feb. 1, 1965)] -- Illinois.

17. For private institutions, "the standards of treatment and care to be maintained shall be such as would be appropriate under existing knowledge of the needs of such patients, as determined by the [Commissioner of Mental Health]..." -- Indiana, §1401.

18. ROSEWOOD STATE HOSPITAL: BULLETIN No. 55 (Feb. 27, 1959): "(1) Patients are not to be kept in seclusion for more than 3 consecutive hours. (2) Patients are not to be kept in restraint for more than 2 consecutive hours. (3) It is recommended also that such cases be thoroughly evaluated in order to determine if other corrective measures, such as intensive medication, could not be resorted to in order to control destructive and assaultive behavior" -- Maryland.

19. ROSEWOOD STATE HOSPITAL: BULLETIN No. 75 (July 24, 1959): "From time to time, a patient may require an emergency operation. Sometimes this may happen on weekends and/or holidays and the family cannot be reached. In such instances, the Superintendent's (or in his absence, the Clinical Director's) permission should be obtained by telephone...." -- Maryland.

20. In addition to the charted statutory provisions, see DEP'T OF MENTAL HEALTH: REGULATION No. 6 (1955), providing rules for the use of seclusion, mechanical restraint, therapeutic and chemical restraint, and packs and continuous baths -- Massachusetts.

21. RULES & REGS. OF DEP'T OF MENTAL HEALTH §4.7 (1964): "Mechanical restraint or seclusion shall only be used by order of the medical superintendent for satisfactory surgical or medical reasons, or to prevent a patient from injuring himself or others." For rules regarding restraint and seclusion in licensed private institutions, including required records thereof, see id. §§9.3(B), 99(H) -- Michigan.

22. RULES & REGS. OF DEP'T OF MENTAL HEALTH §4.1 (1964): "Any employee of the hospital who abuses a patient in any way shall be subject to immediate dismissal. Continued complaints from the patient regarding an employee shall be thoroughly investigated and, if substantiated, his employment shall be terminated." For a similar provision applicable to licensed private institutions, see id. §9.9(I) -- Michigan.

23. *Cf*. RULES & REGS. OF DEP'T OF MENTAL HEALTH §4.4 (1964), providing that permission to use electro-shock treatments must be obtained "from the legally responsible person" -- Michigan.

24. "The standards herein established [as "the measure of services" for the mentally ill] shall be adapted and applied to the diagnosis, care and treatment of...mentally deficient persons..." [ch. 246, §014(9)].

    Cf. ch. 609, §06 (1964): "Reasonable force may be used upon or toward the person of another without his consent... (8) When used to restrain a mentally ill or mentally defective person from injuring himself or another or when used by one with authority to do so to compel compliance with reasonable requirements for his control, conduct or treatment; or (9) When used by a public or private institution providing custody or treatment against one lawfully committed to it to compel compliance with reasonable requirements for his control, conduct or treatment" -- Minnesota.

25. MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. VIII, §V.I, at 74 (1959): "If the patient should complain of his care or treatment, a prompt report of the complaint should be made to the superintendent, in order that he may investigate its accuracy...." -- Minnesota.

26. Both ch. 246, §10, and ch. 256, §06, pertain to "a surgical operation necessary to save the life, health, eye-sight, hearing, or a limb of any patient." Chapter 246, §10, provides for the superintendent to authorize "such surgical operation provided that after diligent search the consent of the proper relatives or guardian cannot be had in season to effect such saving." Chapter 256, §05, provides that the Commissioner of Public Welfare, as guardian of the patient, may consent to such an operation.

    Cf. MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. VII, §III.A, at 61 (1959): "Consent of the nearest relative must be obtained for an operation other than sterilization on a minor or an adult. If the nearest relative is also under guardianship or committed as mentally ill, consent must come from the nearest relative not legally incompetent. If no relative can be located, the Commissioner may give consent... When an immediate operation is necessary and neither a relative nor the Commissioner can be located, the superintendent may authorize the operation..." -- Minnesota.

27. *Cf*. OP. ATT'Y GEN. No. 73 (Oct. 14, 1953), determining that at the time of entering a mental hospital, neither the patient nor anyone in his behalf can give permission to the hospital to perform surgical operations on him for an indefinite future time whenever the hospital staff may decide such operations are necessary -- Missouri.

28. "The decision [of the superintendent] to perform such surgical operation shall be arrived at only after consultation and approval of at least two other physicians and surgeons licensed to practice in this state" -- Nevada.

29. LACONIA STATE SCHOOL: CHILD CARE §5.41 (no date): "Form 5:30/E must be completed whenever any resident is placed under restraint or in seclusion. At the close of the seclusion or restraint period this completed form should be forwarded to the physician in charge of the case who will sign it and file it in the resident's permanent record.... No restraint or seclusion of any form should be applied on any resident without written order of a school physician. ...." -- New Hampshire.

30. LACONIA STATE SCHOOL: GENERAL RULES FOR EMPLOYEES §7 (Apr. 15, 1961): "No employee shall strike or lay hands on a resident unless it be in defense of himself, or unless it is necessary to prevent serious injury to person or property. In such cases only the amount of force necessary to accomplish the desired result is authorized" -- New Hampshire.

31. Cf. §7: "Each board of managers shall have power to place any inmate in any hospital in the state for such medical or surgical treatment as may be necessary,... the approval of the commissioner [of Institutions and Agencies] first having been obtained" -- New Jersey.

32. Cf. PENAL LAW §246: "To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases: ....(6) When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to any other, or in enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person" -- New York.

33. DEP'T OF PUBLIC WELFARE: POLICIES & PROCEDURES; STATE SCHOOLS FOR THE MENTALLY RETARDED at 2, 5 (Oct. 1, 1964): "Under no circumstances shall physical force or threat of physical force be used with any pupil except in self-defense, protection of persons or property, or for the prevention of escape. No greater degree of force shall be used than is necessary to accomplish the required purpose. ....

    "Certain forms of discipline are clearly inappropriate and are prohibited. Grabbing and pushing uncooperative pupils, use of profanity or verbal abuse by staff members, measures which humiliate pupils, or rigid disciplinary action are not permitted. Whipping, paddling, pinching, slapping and any other form of corporal punishment are prohibited. Physical abuse of pupils in any form is prohibited. ....

    "If seclusion in an isolation room becomes necessary for the protection of the pupil, other pupils and/or property, such removal should be of relatively short duration. .... The isolation room should meet reasonable standards of sanitation, safety and supervision. ....

    "Whenever in relation to a pupil a staff member is required to use force... the Superintendent shall require the staff member to submit a written report containing all the circumstances of the incident. The Superintendent shall submit a copy of such written report, together with any comments he may wish to make, to the Director of Public Welfare. If in relation to a pupil a staff member apparently has used force in violation of policy, or it is so charged, the Superintendent will make, or cause to be made, a full investigation of the incident...." -- Oklahoma.

34. There is no specific criminal provision for maltreatment of patients. However, tit. 50, §1524, makes a misdemeanor of "the denial to any individual of the rights accorded to him," with punishment by "a fine not exceeding one thousand dollars ($1,000), or imprisonment not exceeding one year, or both." In addition, tit. 71, §1488, makes it a misdemeanor to violate any statutory or regulatory provision of the Department of Welfare, with punishment "for the first offense... a fine of not less than twenty-five dollars ($25) and not more than one hundred dollars ($100); and for the second or any subsequent offense...a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or...imprisonment in the county jail of not more than six months, either or both..." -- Pennsylvania.

35. LADD SCHOOL: INFORMATION ON PROCEDURES REQUIRED OF ALL EMPLOYEES at 3,9 (Jan. 1965): "Under no conditions whatsoever will corporal punishment be tolerated. Corporal punishment includes any physical abuse. An employee attacked by a resident so that his life or limb is in jeopardy may, of course, protect himself but this should be done with good judgment, patience, and understanding. ....

"...In the event that segregation becomes necessary for the protection of a child against himself or others current medical instructions will be followed....

"...The use of physical abuse is absolutely prohibited in this institution. If, however, you are forced to make physical contact with a child, you are to report this to your supervisor who will (1) call the doctor to examine the child and (2) secure written statements from all witnesses before they leave the grounds. You will write a detailed account of the incident before leaving from duty and submit it to your supervisor. Immediate suspension or dismissal may result from the unwise use of force, or the failure to report these incidents" -- Rhode Island.

36. There is no specific criminal provision for maltreatment of patients. However, tit. 32, §916, makes a crime of "the denial to any individual of any of the rights accorded to him," with punishment by a fine "not exceeding one thousand dollars" or imprisonment "not exceeding one year, or both." In addition, tit. 20, §301, makes it a misdemeanor for any person charged with the care of a "child,...mentally incompetent or helpless person" to mistreat or neglect that person, with punishment by a fine "not less than two hundred dollars" or imprisonment "not exceeding two years," or both -- South Carolina.

37. Cf. §922(5), providing that the Department of Mental Health "shall provide... medical and surgical treatment which will tend to the mental and physical benefits of patients and which is designed to lessen the increase of...mental defectiveness" -- South Carolina.

38. Cf. tit. 9, §816 (1966 Supp.): "Whenever...any inmate of any institution operated by the department of mental health suffers personal injuries or death by reason of the misfeasance, malfeasance, or malpractice on the part of any official or employee of such institution, such inmate, legal or natural guardian or personal representative shall have the right to petition the state board of claims for compensation for such injuries or death..." -- Tennessee.

39. Any patient may be given "such standard treatment including surgery as may be necessary for the welfare of the patient." However, surgery may be performed on patients admitted voluntarily or by certification "only if the consent of the patient or the parent, guardian, spouse, or adult next of kin is first obtained" -- Tennessee.

40. "...Where the consent of any person or guardian is considered necessary, and is requested, and such person or guardian shall fail to reply immediately thereto, the perfirmance or provision for the treatment orservices shall be ordered by the superintendent upon the advice and consent of three (3) medical doctors, at least one of whom must principally be engaged in the private practice of medicine. Where there is no guardian or responsible relative to whom request can be made, treatment and operation shall be performed on the advice and consent of three (3) physicians licensed by the State board of Medical Examiners...." -- Texas.

41. DEP'T OF MENTAL HYGIENE & HOSPITALS: MANUAL OF INSTRUCTIONS FOR NURSING SERVICE PERSONNEL at 16 (1965): "The [combative] patient may be able to better control his emotions if placed in a quiet room alone. Notify the supervisor immediately following the placing of a patient in a quiet room. An order for seclusion must be written by the doctor. It is the responsibility of the supervisor to check the patient and report to the doctor. .... Seclusion may be used for the protection of the patient or others. It should be used as little as possible. ..." -- Virginia.

42. DEP'T OF MENTAL HYGIENE & HOSPITALS: MANUAL OF INSTRUCTIONS FOR NURSING SERVICE PERSONNEL at 6, 22(1965): "Employees are not to abuse patients in any way. This applies to the use of profane language, threatening, teasing, irritating, or ridiculing of patients. Physical abuse such as striking, shoving or slapping patients will not be tolerated and if such an act occurs, the employee will be discharged immediately" -- Virginia.

43. Cf. §14, providing that "the State Hospital Board and the superintendents of the respective hospitals and colonies...shall so far as their resources will permit, provide...medical and surgical treatment as will to the mental and physical betterment of patients, and lessen the increase of...mental deficiency..." -- Virginia.

44. STATE TRAINING SCHOOL: GENERAL REGS. RELATING TO EMPLOYMENT §23 (May, 1964): "No pupil is to be placed in a detention or 'quiet' room without approval from the Superintendent, Assistant Administrator, Director of Cottage Life or Supervisor. In emergency, detention may be used temporarily provided it is reported to the Supervisor verbally within an hour.... Your daily ward report must show the hour at which a pupil was so confined or released..... Mechanical restraint is to be used only with approval from the Superintendent or staff and for the purpose of treatment or protection and not as a disciplinary measure.... Your daily ward report report must show any restraint used" -- Wyoming.

45. STATE TRAINING SCHOOL: GENERAL REGS. RELATING TO EMPLOYMENT §11 (May, 1964): "...Any employee who is cruel or mistreats a resident in any manner will be dismissed without notice..." -- Wyoming.

V - E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of				Determined by	Specified
								Patient	Community				
AAMD DRAFT ACT (1964)				art.2,§n; art.8,§f release	art.8,§f parent or guardian [n.1]	art.8,§f superintendent [n.1]	art.8,§f comprehensive evaluation [n.1]	art.8,§f [n.1]		art.8,§f custody of parent or guardian,or designee [n.1]			
				art.2,§o; art.8,§g placement	art.8,§g consultation with parent, guardian,or custodian	art.2,§o;art.8,§g director of state authority or superintendent	art.8,§g comprehensive evaluation			art.2,§o foster home,boarding home,resident employment,or other arrangement	art.2,§o supervised care		
ALABAMA CODE(1959) Title 45				§244 parole .	§244 (optional) person giving sureties	§244 superintendnt		§244	§244	§244 care of a family		§244 superintendent	
ALASKA STAT.(1962) Title 47,ch.30 [n.2]	§§200,220 head of hospital		§§200,220 good medical practice and existing circumstances	§200 convalescent status		§200 head of hospital		§200			§200 continuing responsibility of hospital and treatment as out-patient or by physician		
ARIZONA REV.STAT.(1956) Title 8[n.3]				§426 visit		§426 Children's Colony Board and sup't		§426		§426 private home	§426 conditions and supervision board deems advisable	§426 Children's Colony Board	
ARKANSAS STAT.(1965 Supp.) Title 59				§308 visit		§308 Children's Colony Board		§308		§308 private home	§308 conditions and supervision board deems advisable	§308 Children's Colony Board	
CALIFORNIA WELFARE & INSTITUTIONS CODE (1962;1965 Supp.)	§6621 superintendent or person in charge of state hospital		§6621 intervals approved by Dep't of Mental Hygiene	§§6725.5,6726 leave of absence [n.4]		§6726 superintendent				§§6726,6726.6 private home,hospital or other facility [n.4]			
COLORADO REV.STAT.(1963) Ch.71,art.1				§28(1) conditional release		§28(1) superintendent or director of public institution		§28(1)	§28(1)				§28(1) discharge if not returned within one year
CONNECTICUT GEN.STAT.(1965 Supp.) Title 17				§174 placement		§174 superintendent of state facility				§174 private boarding home			
DELAWARE (no provision) [n.5,6]	[n.5]	[n.5]		[n.6]				[n.6]		[n.6]	[n.6]		
FLORIDA STAT.(1965 Supp.) Ch.393				§051 furlough		§051 board of comm'rs of state institutions		§051		§051 home	§051 conditions determined by board	§051 board of comm'rs	

V-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of				Determined by	Specified
								Patient	Community				
GEORGIA CODE(1965 Supp.) Title 88	§2509 superintendent		§2509 as frequently as practicable	§2509 leave		§2509 superintendent		§2509			§2509 conditions prescribed by sup't	§2509 superintendent	
HAWAII REV.LAWS(1965 Supp.) Ch.82				§11 leave of absence		§11 director of training school and hospital					§11 conditions director deems advisable		§11 one hundred and twenty days
				§11 conditional release		§11 director of training school and hospital	§11 capable of self-support and self-management, or not in need of institutional care			§11 family or foster care or employment placement	§11 conditions imposed by directo		§11 annual review
IDAHO CODE(1965 Supp.) Title 66	§337 state board of health		§337 as frequently as practicable	§338(a) conditional release		§338(a) state board of health or designated representative	§338(a) improved				§338(a) outpatient or non-hospital treatment or conditions specified by board or designee		§338(a) review after one year
ILLINOIS STAT.(1965) Ch.91-1/2 [n.3]				§§1-16,10-6 conditional discharge [n.7]		§10-6 superintendent		§10-6	§10-6		§1-16 care and treatment under supervision of Dep't of Mental Health		§10-10 discharge if not returned within one year,unless sup't or Dep't requests continuation
INDIANA STAT.(Burns 1964) Title 22 — [n.2]				§1305 placement [n.7,8]		§1305(b) Dep't of Mental Health				§1305(a) family boarding home or other facility	§1305(b) visit by representative of Dep't at least once each calendar quarter		
				§§1306(9), 1307 convalescent leave [n.7,8]			§1307 fit to be at large and not in need of special care	§1307			§1306(9) care and treatment under supervision of Dep't of Mental Health		§1307 short periods
IOWA CODE(1965 Supp.) Ch.222				§59 convalescent leave [n.7,9]		§59 superintendent				§59 (optional)family care [n.9]	§59 supervision of hospital-school		
KANSAS (no provision) [n.10]													

N.R. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of Patient	Community			Determined by	Specified
KENTUCKY REV.STAT.(1963)				ch.210,§270 (2) placement		ch.210,§270(2) Com m'r of Mental Health and hospital staff	ch.210, §270(2) improved and not dangerous	ch.210, §270(2)		ch.210§270(2) private home or private nursing home		ch.210,§270 (2) Comm'r of Mental Health	ch.210,§270(2) length of time as Comm'r deem advisable
				ch.202,§370 (1) trial visit		ch.202,§370(1) hospital				ch.202,§370(1) care of family or friends		ch.202,§370 (1) hospital	
LOUISIANA REV.STAT.(1950 1965 Supp.) Title 28	§96(B) superintendent	§96(B) not less than every six months	§96(B) as frequently as practicable	§100 leave of absence		§100 superintendent	§§96(G),100 no longer requires treatment						
				§100.1 convalescent status		§100.1 superintendent	§100.1 improved	§100.1			§100.1 continuing responsibility of hospital and out-patient or other treatment		§100.1 annual review
				§101 boarding out		§101 sup't and dep't of hospitals		§101		§101(B) responsible persons (optional)giving bond	§101(C) frequent visits by agent of institution		
MAINE REV.STAT.(1964) Title 34				§2154 conditional release		§§2151,2154 superintendent				§2154 responsible person	§2154 conditions specified by sup't	§2154 superintendent	§2154 definite or indefinite
MARYLAND CODE(1964) Art.59	[n.11]	[n.11]		§41 leave of absence or parole [n.12]	§41 relatives or friends [n.13]	§41 medical sup't or chief medical officer		§41				[n.13]	§41 not exceeding one year unless renewed [n.13]
MASSACHUSETTS GEN.LAWS(1965) ch.123		[n.14]		§16 boarding out [n.15]		§16 superintendent	§16 quiet and not dangerous	§16A		§16 suitable family or elsewhere	§31 visited at least once in three months		
				§88 leave of absence [n.15]		§88 sup't or manager	§§88,94 mental examination			§88 (optional)in charge of guardian,relatives or friends	§88 (optional)periodic reports		§88 not exceeding twelve months; discharge if not returned after twelve months
				§88A parole [n.15]		§88A superintendent		§88A		§88A home	§88A conditions determined by sup't	§88A superintendent	

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V-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of Patient	Welfare or Interest of Community			Determined by	Specified
MICHIGAN STAT.ANN.(1956, 1965 Supp.) Title 14				§825(1) convalescent status [n.16]		§825(1) medical sup't						§825(1) medical sup't [n.17]	
				§826 leave of absence [n.16]		§826 medical sup't		§826	§826		§826 conditions prescribed by dep't of mental health		
MINNESOTA STAT.(1965 Supp.)				ch.256,§05 parole [n.18]							ch.256,§05 (optional)supervision by agents and persons appointed by comm'r of public welfare		
				ch.525,§761(1) release [n.18]		ch.525,§761(1) comm'r of public welfare or sup't	ch.525,§761(1) not dangerous to public		ch.525, §761(1)	ch.525,§761(1) any person(optional) furnishing bond	ch.525,§761(1),(2) conditions prescribed by releasing authority; supervision		
				ch.525,§762(2) placement [n.18]		ch.525,§762(2) comm'r of public welfare				ch.525,§762(2) outside institution	ch.525,§762(2) supervision through child welfare board or other agency		
MISSISSIPPI CODE(1952)	§6767 superintendent	§6767 once during first month, first two years, and first five years	§§6766;6767 frequent; for children frequent intervals during minority	§6779 parole	§6779 (optional) person giving sureties	§6779 superintendent		§6779	§6779	§6779 private home;(optional)person giving sureties	§6779 periodic reports to sup't	§6779 superintendent	
MISSOURI STAT.(1962) Ch.202				§641(4), 651(1) conditional discharge		§§641(1),651(1) superintendent		§641(1)		§641(1) (optional)family boarding home	§641(2) periodic visits and inspections		§655 discharge after year or more
MONTANA (no provision) [n.3,10]													
NEBRASKA REV.STAT.(1958, 1960;1965 Supp.) Ch.83				§§501,503 parole		§503 superintendent				ch.43,§§507,508 (optional if not returned to own home) care of Director of Public Welfare			
NEVADA REV.STAT.(1963) Ch.433				§570 conditional release or parole		§570 superintendent	§570 not fully recovered	§570	§570	§570 custody of relative, friend or guardian			
NEW HAMPSHIRE REV.STAT.(1964) Ch.171				§19 parole [n.19]		§19 director of div'n of mental health		§19		[n.19]	§19 conditions and supervision provided by director		

V-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of Patient	Welfare or Interest of Community			Determined by	Specified
NEW JERSEY STAT.(1965 Supp.) Title 30,ch.4			[n.20]	§107 parole		§107 chief executive officer		§107		§§107,165.2(2) (optional)at board in family care; sheltered life program	§107 rules and regulations of board of managers		§165.2(2) short or long term
				§84.2 transfer	§84.2 patient or guardian;if patient is minor,parent or guardian	§84.2 Commissioner of Institutions & Agencies			§84.2	§84.2 service or facility of religious society or organization			
NEW MEXICO STAT.(1965 Supp.) Ch.34,art.3				§7 parole	[n.21]	§7 board of directors [n.21]					[n.21]		
NEW YORK MENTAL HYGIENE LAW(McKinney 1966 Supp.)	§34(9) director of institution			§34(12) conditional release		§34(12) director of institution	§34(12) not in need of active hospital care and treatment	§34(12)		§34(12) at board in family care			
				§132 community status		§132 director or person in charge				§132 custody of parent, relative,guardian, or other person	§132 regulations of comm'r of mental hygiene;reports by custodian of patient's condition		
NORTH CAROLINA (no provision) [n.10]													
NORTH DAKOTA CENTURY CODE (1965 Supp.) Title 25,ch.4				§08.1 temporary release		§08.1 superintendent		§08.1		§08.1 own home or that of relative or friend, foster home,state institution,or other beneficial environment	§08.1 continuing responsibility to and supervision by superintendent		
OHIO REV.CODE(1966 Supp.) Ch.5122 [n.22]				§§22,23 trial visit		§§22,23 head of hospital		§§22,23	§§22,23		§§22,23 conditions imposed by head of hospital	§§22,23 head of hospital	§23 annual review
OKLAHOMA STAT.(1961;1966 Supp.) Title 43A [n.23]	§411(b) superintendent	§411(b) at least once each year		§73 vacation and extended visit [n.24]	§73 for extended visit,by custodian of patient on vacation	§73 superintendent		§73					§73 for vacation, 30 days unless extended;for extended visit, return or discharge after six months
				§411(c) conditional release [n.24]		§411(c) superintendent	§411(c) social or physical improvement	§411(c)		§411(c) return to family or placement in suitable surroundings			

V-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
AND STATUTE	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of Patient	Welfare or Interest of Community			Determined by	Specified
OREGON REV.STAT.(1965) Ch.427	§120 superintendent		§120(2) (optional) request of relative or guardian	§150 leave of absence		§150(1) superintendent					§150(1) regulations of mental health division		
PENNSYLVANIA STAT.ANN.(1954) Title 50				§1321 leave of absence		§1321(a) superintendent	§1321				§1321(a) conditions prescribed by sup't		§1321(d) indefinite
				§1341 boarding out		§1341(a) sup't and board of trustees	§1341(a) not criminal suicidal or homicidal				§1341(a) regulations of dep't of welfare		
RHODE ISLAND GEN.LAWS(1957) Title 40,ch.3			[n.25]	§11 parole [n.26]		§11 ass't director of social welfare					§11 conditions prescribed by ass't director [n.26]		[n.26]
SOUTH CAROLINA CODE OF LAWS (1962) Title 32	§1020 superintendent	§1020 not less than every twelve months	§1020 as frequently as practicable	§§991,1092 leave of absence		§§991,1032 sup't and Dep't of Mental Health §1092 board of trustees		§§991,1092			§1032 conditions specified by Dep't of Mental Health	§§991,1092 sup't;board of trustees	
				§1031 transfer		§1031 Dep't of Mental Health	§1031 mentally or physically infirm or harmless			§1031 custody of family,guardian, trustee,committee, other person responsible,or county health authorities			
SOUTH DAKOTA (no provision)													
TENNESSEE CODE(1966 Supp.) Title 33 [n.3]				§510 conditional discharge		§510 superintendent		§510	§510		§510 regulations of comm'r of mental health		§510 (optional) discharge after year or more
				§510 trial placement		§510 superintendent		§510		§510 custody of family giving sureties			
TEXAS REV.CIVIL STAT. (Vernon 1966 Supp.) Art.3871b [n.3]				§15,16 furlough		§§15,16;art.5547-202,§2.16 Dep't of Mental Health & Mental Retardation		§15		§15,16 employment;or custody of parents, spouse,guardian, relatives,or other persons	§§15,16 conditions and supervision prescribed by Dep't of Mental Health & Mental Retardation	§16 Dep't of Mental Health & Mental Retardation	
				§17 placement		§17;art.5547-202, §2.16 Dep't of Mental Health & Mental Retardation		§17		§17 foster home	§17 field services of Dep't of Public Welfare		

V.-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
		Frequency					Criteria					Duration	
								Welfare or Interest of					
	Conducted or Ordered by	Specified	Criteria	Status or Procedure	Application by	Granted by	Condition of Patient	Patient	Community	Place or Custody	Conditions or Supervision	Determined by	Specified
UTAH (no provision) [n.3,10]													
VERMONT STAT.(1959) Title 18				§2752 visit [n.27]		§2752 board of mental health or sup't				[n.28]	§2752 (optional) reports of patient's progress		§2752 not exceeding six months
				§2755 placement [n.27]		§2755 sup't and board of mental health				§2755 private boarding home [n.28]			
				§§2407,2408 2756 conditional discharge [n.27]		§§2407,2408,2756 board of mental health and/or sup't	§2417	§§2407, 2756		§§2407,2756 place from which committed,or other suitable place [n.28]			§2407 discharge if not returned within two years §2756 annual review
VIRGINIA CODE(1950;1966 Supp.) Title 37				§§128,129, 130.1 placement		§§128,129,130.1 superintendent	§128 quiet and not dangerous	§129		§§128,129,130.1 board with family or home with training provisions,or nursing home	§§128,192,131 regulations of Comm'r of Mental Hygiene & Hospitals; supervision of sup't; visits not less than every three months		
				§135 furlough or trial visit		§135 superintendent				§135 (optional)care of committee,relative friend or other person.	§§38,135 (optional)outpatient treatment;reports of patient's condition	§135 superintendent	§135.1 after one year, discharge or six month extensions
WASHINGTON REV.CODE(1962) Title 72,ch.33				§§020(11), 160 placement	§§020(11), 140,160 consultation with parent or guardian	§§020(11),160 superintendent	§160	§020(11)		§080 (optional)foster home	§160 conditions sup't deems advisable		
WEST VIRGINIA CODE(1961;1965 Supp.)	§2667 superintendent		§2667 as frequently as practicable	§2668 convalescent status or trial visit		§2668 superintendent	§2668 improved	§2668			§2650,2668 regulations of director of mental health;continuing responsibility of hospital and treatment plan		§2668 annual review
				§2669 release	§2669 person giving bond	§2669 superintendent	§2669 unimproved	§2669			§2669 proper care;reports at least every six months		
				§2674 placement		§2674 director of mental health and sup't	§2674	§2674	§2674	§2674 boarding home	§2674 visits at least every three months;(optional)supervision of psychiatric social worker		

V-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

STATE AND STATUTE	PERIODIC EXAMINATION OR REVIEW			CONDITIONAL RELEASE OR PAROLE									
	Conducted or Ordered by	Frequency		Status or Procedure	Application by	Granted by	Criteria			Place or Custody	Conditions or Supervision	Duration	
		Specified	Criteria				Condition of Patient	Welfare or Interest of Patient	Welfare or Interest of Community			Determined by	Specified
WISCONSIN STAT. (1965) Ch.51				§18(1) placement		§18(1) dep't of public welfare [n.29]	[n.30]	§18(1)		§18(1) family boarding home	§18(1) conditions determined by dep't; (optional) visits by dep't [n.31]		
				§22(4) temporary discharge		§22(4) superintendent							
WYOMING STAT. (1957) Title 9 [n.3]				§§464,465 vacation or parole		§§464,465 Board of Charities & Reform				§465 custody of parent relative, guardian or other person	§465 reports as required by sup't		
DISTRICT OF COLUMBIA CODE (1966 Supp. V) Title 21 [n.3]				§1120 parole or vacation		§1120 superintendent	§1120 improved	§1120	§1120	§1120 home of guardian, relatives, or other persons	§1120 conditions prescribed by Dep't of Public Welfare		§1120 (optional) indefinite

Chart V-E. PROTECTION AND RIGHTS OF MENTALLY RETARDED PATIENTS -- REVIEW AND RELEASE

FOOTNOTES

1. "The superintendent may authorize the release of any resident to the custody of his parent or guardian who retains legal custody, or to another person designated by the parent or guardian.

   "In the absence of such authorization any parent or guardian who retains legal custody of any resident may formally request his release in writing, which release shall be granted at the earliest reasonable opportunity, but not more than 48 hours after receipt of a written application. If such release is effected contrary to the advice of the superintendent based on a recent comprehensive evaluation of the individual, the superintendent shall so advise the parent or guardian in writing. If in the opinion of the superintendent the health, safety, welfare, or morals of the resident are seriously endangered by release, he shall so advise the director [of the state authority], who may thereupon at this discretion take action [to obtain an appropriate court order] under Article 6..." -- A.A.M.D. Draft Act.

2. The charted provisions for the mentally ill are also applicable to the mentally retarded because mental retardation is specifically included in the definition of "mental illness" [see Chart I-A] -- Alaska, Indiana.

3. There is no provision for periodic review of mentally retarded patients, but there are provisions applicable to the mentally ill -- ARIZONA REV. STAT. tit. 36, §524(D)(1966 Supp.); ILLINOIS STAT. ch. 91-1/2, §7-7(1965); MONTANA REV. CODES tit. 38, §111 (1961); TENNESSEE CODE tit. 33, §609 (1966 Supp.); TEXAS REV. CIVIL STAT. art. 5547, §77 (Vernon 1958); UTAH CODE tit. 64, ch. 7, §42 (1953): WYOMING STAT. tit. 25, §§68, 72(a)(iii)(1965 Supp.); D.C. CODE tit. 21, §§546, 548 (1966 Supp.V).

4. In addition to the charted statutory provisions, see DEP'T OF MENTAL HYGIENE: POLICY & OPERATIONS MANUAL §§3721-3724 (April, 1966), providing for "visit," "home leave," "family care," and "work placement" -- California.

5. HOSPITAL FOR MENTALLY RETARDED: MEMORANDUM 64-11 (Oct. 22, 1964): "Frenquency Schedule for Psychological Testing at H.M.R. ....

LEVEL OF RETARDATION	CHRONOLOGICAL AGE		
	Under 16 yrs.	16-25 yrs.	Over 25 yrs.
Mild (50-70)	Every 2 yrs.	Every 2 yrs.	Repeat for special reason
Moderate (30-49)	Every 2 yrs.	Every 2 yrs.	Repeat for special reason
Severe (10-29)	On Admission, Age 5, 10	Age 16, 25	Repeat for special reason
Profound (0-9)	On Admission Only -- Repeat for special reason"		

-- Delaware

6. There is no statutory provision, but regulations provide for a "Community Residence Program" which permits "the retarded to remain in his own home, or live in a foster home and receive the benefits of community facilities" [HOSPITAL FOR MENTALLY RETARDED: MEMORANDUM 65-11 (Aug. 12, 1965)]. There is also "Community Placement" of residents who have progressed through a program of employment training [HOSPITAL FOR MENTALLY RETARDED: MEMORANDUM 64-10 (Oct. 14, 1964)] -- Delaware.

7. In addition to the charted provisions, patients may also be: "boarded out" -- Illinois, §§10-10, 12-8, 12-19 [see also DEP'T OF MENTAL HEALTH: MENTAL HEALTH SERVICE RULE 2.02 (Apr. 10, 1965)]; given "furloughs" -- Indiana, §1908; "removed as a habilitation measure" -- Iowa, §77.

8. In addition to the statutory provisions, see DEP'T OF MENTAL HEALTH: CODIFIED OFFICIAL BULLETINS V-2.00 (June 5, 1963), V-11.00 (July 16, 1964), providing for "visit," "leave of absence," and "community work placement" -- Indiana.

9. In addition to the statutory provisions, see WOODWARD STATE HOSPITAL-SCHOOL: MEMORANDUM 62-4 (Mar. 28, 1962), providing for "community placement" in county homes, family care, custodial homes, and nursing homes. There is also provision for "job placement" and specialized training programs through the State Division of Vocational Rehabilitation [WOODWARD STATE HOSPITAL - SCHOOL: MEMORANDA 62-27(4)(July 20, 1962), 62-50 (Oct. 16, 1962)] -- Iowa.

10. There is no statutory provision for conditional release of mentally retarded patients, but there is a provision applicable to the mentally ill -- KANSAS STAT. ch. 59, §2924 (1965 Supp.)("convalescent status"); MONTANA REV. CODES tit. 38, §§501-507 (1947, 1965 Supp.)("convalescent leave"); NORTH CAROLINA GEN. STAT. ch. 122, §§67-68.1 (1964)("probation"); UTAH CODE tit. 64, ch. 7, §§27, 43 (1953)(placement at board, and "conditional release").

11. ROSEWOOD STATE HOSPITAL: BULLETIN No. 59, §3 (April 3, 1959): "Students and cottage physicians should continuously see that patients have one physical examination done at least once a year" -- Maryland.

12. In addition to the statutory provisions, there are regulatory procedures for "home visit" [ROSEWOOD STATE HOSPITAL: BULLETIN No. 166 (May 12, 1961)] -- Maryland.

13. "...such parole may be granted for a period not exceeding one year, or such further period or periods for which said parole may be renewed at the option of the medical superintendent or chief officer, upon application in writing, endorsed by the relatives, friends or other persons at whose instance the said patient was first committed, and who shall obligate themselves to give him or her proper care during the period of such parole or any renewal or renewals thereof. ...." -- Maryland.

14. DEP'T OF MENTAL HEALTH: REGULATION No. 20, §13(d),(e)(1955), provides that for licensed private institutions, "resident patients shall receive mental and physical examination at least annually. ... In the instance of schools for the mentally deficient, educational progress notes shall be made monthly. Records of indicated psychological tests made shall also be kept" -- Massachusetts.

15. In addition to the charted statutory provisions, regulations provide for "visit" and "parole." The latter procedure, which is specially applicable to the State Schools for the Mentally Deficient, "means regularly supervised work placement in the community and may extend for an indefinite period of time" [DEP'T OF MENTAL HEALTH: REGULATION No. 8, §§3,6(1955)] -- Massachusetts.

16. In addition to the charted statutory provisions, there are regulatory procedures for "visit" and "family care" [RULES & REGS. OF DEP'T OF MENTAL HEALTH §§3.10 (B), 7.9 (1964)] -- Michigan.

17. "Any patient aggrieved by the term specified for convalescent status may appeal the decision of the medical superintendent to the probate court of the county of residence" -- Michigan.

18. In addition to the charted statutory provisions, there are regulatory procedures for "visits" and "vacations" [MANUAL OF DEP'T OF PUBLIC WELFARE; MENTAL DEFICIENCY & EPILEPSY ch. VI, §V, at 50-55 (1959)]. The regulations also provide detailed procedures for "community placement" [id. ch. IV, §VII, at 24-29; ch. V, §III, at 33-40] -- Minnesota.

19. In addition to the charted statutory provisions, there are regulatory procedures for "Work Placements," "Home Placement," and "Vacations" [LACONIA STATE SCHOOL: EDUCATION & TRAINING §6.10(3),(4),(6)(Apr. 5, 1962)] -- New Hampshire.

20. BUREAU OF COMMUNITY INSTITUTIONS, DEP'T OF INSTITUTIONS & AGENCIES: MANUAL OF STANDARDS FOR INSTITUTIONS FOR THE MENTALLY RETARDED §III.C, at 9 (May 23, 1957): "Periodic psychological guidance and testing shall be made to insure the best individual development" -- New Jersey.

21. The Board of Directors of Los Lunas Hospital and Training School orders parole of an inmate "upon advice of the medical superintendent [or acting superintendent]...in cooperation with any competent interested physician outside said institution" -- New Mexico.

22. The charted provisions for the mentally ill are specifically made applicable to mentally retarded patients by ch. 5125, §25 -- Ohio.

23. The charted provisions may be obsolete, since they originated prior to the transfer of state institutions for the mentally retarded from the former Department of Mental Health and Mental Retardation to the Department of Public Welfare. See tit. 56, §§301, 303, 310(b); note 24 infra -- Oklahoma.

24. DEP'T OF PUBLIC WELFARE: POLICIES & PROCEDURES; STATE SCHOOLS FOR THE MENTALLY RETARDED at 6 (Oct. 1, 1964): "At the expiration of six months on trial visit, the pupil will be either discharged or returned to the State School for the Mentally Retarded. .... The discharge will be determined to be in the best interest of the state school or pupil" -- Oklahoma.

25. DEP'T OF SOCIAL WELFARE: POLICY, PROCEDURE AND FUNCTIONAL ORGANIZATIONAL CHART RE LADD SCHOOL §II.E.2, at 6 (July 20, 1965): "There shall be a scheduled, periodic review of each resident retarded individual to determine current status of development, initiate or continue individual programming and/or consideration for trial placement or discharge" -- Rhode Island.

26. In addition to the statutory provisions, there are regulatory procedures for community placement with natural or foster parents or with relatives; placement in a boarding, rest, convalescent, or nursing home, or in a community facility for the retarded. There are provisions for periodic review of and continuing services to patients so placed [DEP'T OF SOCIAL WELFARE: POLICY, PROCEDURE AND FUNCTIONAL ORGANIZATIONAL CHART RE LADD SCHOOL §§II.D.2, II.E.7, V.A.3(e)(July 20, 1965)] -- Rhode Island.

27. In addition to the statutory provisions, there is a regulatory procedure for "vacations" upon request to the superintendent [BRANDON TRAINING SCHOOL: VISITING & VACATION POLICY (June 1, 1965)] -- Vermont.

28. See BRANDON TRAINING SCHOOL: ADMISSION PROCESS (no date): "...Students are eligible to leave the institution under such placements as family, wage, vocational rehabilitation, foster home care and boarding home care" -- Vermont.

29. But cf. DEP'T OF PUBLIC WELFARE: FAMILY CARE MANUAL §6.A(2), at 7 (Sep. 1960): "In the case of State hospitals or colonies authority to place a patient rests with the superintendent" -- Wisconsin.

30. DEP'T OF PUBLIC WELFARE: FAMILY CARE MANUAL §5.A, at 4 (Sep. 1960): "...The patient should have recovered from acute symptoms and behavior should be fairly well stabilized. The patient should have received maximum benefit through the regular institutions services and be ready for supervised community living. The physical condition should be fairly well stabilized... The basic consideration is that the patient is selected for placement as a part of a continued treatment or rehabilitative plan" -- Wisconsin.

31. DEP'T OF PUBLIC WELFARE: FAMILY CARE MANUAL §5.D, at 5-6 (Sep. 1960): "The superintendent is ultimately responsible for the care, supervision and well-being of a patient placed in Family Care. The actual implementation and management of the program will usually be delegated to a social worker. .... Supervisory visits to the home should be made as frequently as necessary, probably once weekly during the first month of placement and at least monthly thereafter. ..." Wisconsin.

Appendix A. COMPARISON OF INSTITUTIONALIZATION PROCEDURES FOR THE MENTALLY RETARDED AND THE MENTALLY ILL [n.a,b]

STATE	Same Procedures Applicable to Mentally Retarded and Mentally Ill			Procedures Applicable Only to Mentally Retarded			Total Procedures Applicable to Mentally Retarded		
	Voluntary Admission	Certification	Judicial Commitment	Voluntary Admission	Certification	Judicial Commitment	Voluntary Admission	Certification	Judicial Commitment
ALABAMA						X			X
ALASKA	X	X	X				X	X	X
ARIZONA				X		X	X		X
ARKANSAS	[redacted]			X		X	X		X
CALIFORNIA	X					X	X		X
COLORADO	X		X				X		X
CONNECTICUT				X		X	X		X
DELAWARE				X	X		X	X	
FLORIDA				X-2		X	X-2		X
GEORGIA	0		0	X		X	X,0		X,0
HAWAII				X		X	X		X
IDAHO	X		X						X
ILLINOIS	X,0	X-2	X				X,0	X-2	X
INDIANA	X		X	0		X	X,0		X-2
IOWA				X		X	X		X
KANSAS				X			X		
KENTUCKY	X	X	X				X	X	X
LOUISIANA		X	X				X		X
MAINE					X	X		X	X
MARYLAND	X	X-2				X	X	X-2	X
MASSACHUSETTS				X		X-2			X-2
MICHIGAN	X		X						X
MINNESOTA	X					X	X		X
MISSISSIPPI 1	X	X	X	X			X-2	X	X

Appendix A. COMPARISON OF INSTITUTIONALIZATION PROCEDURES FOR THE MENTALLY RETARDED AND THE MENTALLY ILL [n.a,b]

STATE	Same Procedures Applicable to Mentally Retarded and Mentally Ill			Procedures Applicable Only to Mentally Retarded			Total Procedures Applicable to Mentally Retarded		
	Voluntary Admission	Certification	Judicial Commitment	Voluntary Admission	Certification	Judicial Commitment	Voluntary Admission	Certification	Judicial Commitment
MISSOURI		O			X			X,0	
MONTANA				X		X	X		X
NEBRASKA				X		X	X		X
NEVADA				X-2		X	X-2		X
NEW HAMPSHIRE						X			X
NEW JERSEY				X			X		
NEW MEXICO				X		X	X		X
NEW YORK				X	X	X	X	X	X
NORTH CAROLINA				X			X		
NORTH DAKOTA			X	X			X		X
OHIO	0	X-2	X	X			X,0	X-2	X
OKLAHOMA				X			X		
OREGON				X		X	X		X
PENNSYLVANIA		X				X		X	X
RHODE ISLAND				X		X	X		X
SOUTH CAROLINA				X		X	X		X
SOUTH DAKOTA			X	X			X		X
TENNESSEE				X	X	X	X	X	X
TEXAS				X		X	X		X
UTAH				X		X	X		X
VERMONT						X			X
VIRGINIA	X	X	X-2				X	X	X-2
WASHINGTON				X			X		

Appendix A. COMPARISON OF INSTITUTIONALIZATION PROCEDURES FOR THE MENTALLY RETARDED AND THE MENTALLY ILL [n.a,b]

STATE	Same Procedures Applicable to Mentally Retarded and Mentally Ill			Procedures Applicable Only to Mentally Retarded			Total Procedures Applicable to Mentally Retarded		
	Voluntary Admission	Certification	Judicial Commitment	Voluntary Admission	Certification	Judicial Commitment	Voluntary Admission	Certification	Judicial Commitment
WEST VIRGINIA	X	X	X				X	X	X
WISCONSIN	X		X		X		X	X	X
WYOMING				X		X	X		X
DISTRICT OF COLUMBIA						X			X
TOTALS	X-14S, 14P 0-3S,3P	X-10S, 13P 0-1S,1P	X-15S, 16P 0-1S,1P	X-31S, 33P 0-1S,1P	X-6S,6P 0-0	X-30S, 31P 0-0	X-44S, 47P 0-4S,4P	X-16S, 19P 0-1S,1P	X-44S,47P 0-1S,1P
[n.a,b]	X-19S, 43P 0-4S, 5P			X-43S, 69P 0-1S, 1P			X-51S, 113P 0-5S, 6P		

APPENDIX A

COMPARISON OF INSTITUTIONALIZATION PROCEDURES FOR THE MENTALLY RETARDED AND THE MENTALLY ILL

FOOTNOTES

a. For the criteria used to classify institutionalization procedures, see Section III.A.

b. Symbols used in this chart have the following meanings:

X - institutionalization procedure charted in Chart II, III, or IV.

O - institutionalization procedure not charted but noted in a footnote to Chart II, III, or IV.

S - state(s) (including D.C.)

P - procedure(s)

APPENDIX B

FIRST ADMISSIONS TO INSTITUTIONS FOR THE MENTALLY RETARDED BY AGE GROUPS (Percentages) *

AGE OF PATIENTS	ADMITTING INSTITUTIONS								
	Public			Private			Total		
	1962	1963	1964	1962	1963	1964	1962	1963	1964
Under 5	16.6	16.7	14.8	28.8	28.1	27.1	17.9	17.7	15.9
5 - 9	28.4	27.4	29.7	23.1	23.8	23.9	27.8	27.1	29.2
10-14	26.9	26.1	26.9	24.4	24.1	25.4	26.6	26.0	26.8
15 - 19	16.9	18.3	17.3	14.0	12.7	12.6	16.6	17.8	16.9
Under 20 (Subtotals)	88.8	88.6	88.8	90.3	88.7	89.0	88.9	88.6	88.8
20-24	3.6	4.0	4.0	2.2	3.6	3.7	3.5	4.0	3.9
Over 25	7.4	7.4	7.2	7.4	7.7	7.4	7.4	7.4	7.2

* Percentages shown in the table were computed from data compiled by the National Institute of Mental Health, U. S. Public Health Service: Patients in Mental Institutions 1962, 1963, 1964. Parts I & IV, Tables 2 (Washington, U.S. Dep't of Health, Education, and Welfare, 1964, 1965, 1966). Columns of the table do not always add properly due to rounding of figures and exclusion of patients of unknown age.